XXVIIIth YEAR.) THE (No. 1455.)

MARYLAND GAZETTE.

THURSDAY, JULY 29, 1773.

TO THE PRINTERS.

Head of Severn, July 22, 1773.

BE pleased to give a place in your gazette to the following *considerations*, I have been constrained, (and much against my will,) to submit to the censure or approbation of the *publick*, from an over hasty promise, I made, on the day of the Anne-Arundel election, of communicating through your paper, the GROUNDS and REASONS of the *opinion* I have entertained in favour of the PROCLAMATION; and which, had I been allowed, agreeably with my requests, at that time, *orally* to have *declared*, from the *short notes*, I had provided for the purpose, and from whence, these *considerations* have been since drawn; the trouble of their *publication* might well have been avoided.

They should have made their appearance ere now, having been in the like readiness for the press, they are at present, ever since the commencement of the last session of assembly, as their date denotes; when they were brought down to Annapolis for their impression; but on reflection, it appeared improper to set forth any thing at that time, which might possibly divert the attention of the publick, from matters of greater concern, wherewith it was then supposed to be occupied; and to revive a TOPICK of discussion, that had already been productive of much altercation, some warmth, and a considerable *waste* of time in the community; especially too, as it was expected, that the zeal and wisdom of the then sitting assembly, would have situated it to have fallen on, some useful and salutary REGULATIONS, respecting the FEES OF OFFICERS, and restrictive of those EVILS OF OPPRESSION and EXTORTION, the PROCLAMATION was issued to PREVENT; and thereby to have superseded the REASON, the EXPEDIENCY, the NECESSITY of the continuance of that *measure* any longer, (if still disputed;) and thus putting up at once, all grounds of future clamour, travail, and dispute among us concerning it. Since the prorogation of the general assembly, my private business in the country, would not admit of my stay at the city, to attend the press; nor, should I be inclined now to send forth these considerations, had not a friend kindly engaged to take this trouble off my hands.

I trust, it comes out soon enough, if it be productive of any GOOD EFFECT; if not, it SURELY comes too SOON: *one end*, I flatter myself, it will answer, which is, to put *abler men*," on the disquisition of this subject.

It remains now, briefly to entreat, that the *publick* will be pleased, to excuse or overlook its imperfections, which I fear are many——

——"Et, quas aut incuria fudit,
"Aut humana parum cavit natura;"——

sensible as they must be, that I have appeared in PRINT, not through FREE-WILL, but from CONSTRAINT.

I am your's, and the *publick's*,
most obliged and humble servant,
JOHN HAMMOND.

TO THE PUBLICK.

Anne-Arundel county, Head of Severn, June 16, 1773.

IN a gazette, *(A)* that some time since appeared, and which gave an *account* of the Anne-Arundel *election*, the following *frivolous charge*, was contained; if it *merits* the name of *one*: viz. "that "the *old gallows* was cut down and *burnt*, and the *proclamation* buried by the citizens, *taken up and destroyed*, by *the order* of Mr. John Hammond, on the "morning of the election." That I requested on that morning, a gentleman, who superintends some buildings I am erecting, to send one or two of his workmen, and cut down the gallows, *is true*: that I ordered it to be *burnt*, *is false*: that I had a RIGHT, however, to destroy it, and thereby "abate a nuisance" on my land, and just before my door, I believe, will scarce be controverted; and that my MOTIVE in doing it was GOOD, I submit to the judgment of every man, who is a friend to decorum, peace, and harmony, in government; on assuring him, that I had nothing more in view, than the prevention of insult to magistracy, riot, anarchy, and excess; and the people from being agitated and misled, by vain shews of pageantry, loud harangue, firing of guns, and such like devices of artful and designing men, to inflame their passions, and pervert their understandings. But that, I *ordered* the *proclamation*, *to be taken up*, and *destroyed*, *(as it charged) or gave any particular directions* about it; or even, had it in my memory, or contemplation, at that time; I do here publickly aver to be a LIE, as gross as its AUTHOR, (be he who he may) that hath caused it to be printed: and in PROOF of my AVERMENT, I refer to the underwritten declaration of Mr. Anderson, *(B)* the gentleman, whose workmen, in consequence of my request, cut down the gallows. As to the proclamation, that is above alleged, to be destroyed, it is now *whole*, *uninjured*, and *safe* in my hands: they, who dug it up, of their own free will and accord, delivered it to a person, who fancying it would occasion a little mirth with my friends, delivered it to me: and it really had the expected effect: for, at the very time, I am making this declaration to the publick, I cannot but frankly own, it doth excite involuntarily a SMILE on my face, to reflect that this same proclamation, which on the 14th day of May, 1773, was "hearsed in canonized earth," should on the 24th of the said month, "have burst its cear-"ments;" "that the sepulcher, wherein it was "quietly inurned, should have oped his ponderous "and planken jaws, to cast it up again;" "that it "should in compleat form," in perfect print, uninjured by DEATH, and the GRAVE; ("O DEATH where "is thy STING! O GRAVE where is thy VICTORY!") revisit thus, the rays of the sun, making day hideous to *many*; and *some* fools of nature,

So horribly to shake their dispositions
With thoughts beyond the reaches of their souls. *(C)*

It hath *arisen*, I still *exists*; it's *constitutional nature and qualities*, will "bear it stiffly up," nor ever suffer "it's sinews to grow old," and weak; until *some publick act of the legislature suppressive of extortion and oppression, (those evils of office, the proclamation was created to prevent;) doth pass among us*, and *thereby supersede the reason, the expediency, I might* have said, *the necessity, of that measure!* Then, and not till then; I expect it will vanish, disappear, and depart from among us; leaving this sublunary world, and its *cavilling* and *quirking sons*, (the *sowers of sedition* and *discord* among us;) to *exhibit*, *spout*, and *foam*, concerning its *legal essence and properties*; whilst *it will gloriously take its flight, and seek its* habitation "in nubibus," the place pre-provided for it by the great Littleton; *(D)* thereto live, and exist in *abeyance*; i. e. "in the remembrance, intendment, and consideration of the law;" or, as his commentator, Sir Edward Coke, saith, *(E)* "in expectation;" permit me to add, of a return to us, again; when the like *exigency* of our province, *brought* on us, by a *like cause*, (if ever, it happens, that the present one be removed) an unhappy disagreement between the branches of our legislature, concerning the limitation of *officers* and *lawyer's* fees, shall require it at the hands of the executive power here, whose office, and trust, I conceive it clearly to be, to guard the good people of our province, from every injurious act of *extortion* or *oppression*: until (I say,) such a *publick law* is passed among us, as doth and will supply the place of the *proclamation*, I trust, no human efforts to destroy it, will prevail; on the contrary, that if its *incombustible nature* could possibly be rendered, *susceptible of flame*, immediately on its being *reduced to ashes*; a new one, phœnix like, would spring up, from them; or, that in imitation of the sibyl's twig, described by Virgil;

——— "primo avulso, non deficit alter
Aureus, et simili frondescit virga metallo."
"One pluck'd away; a second branch you see;
"Shoot forth in gold, and glitter thro' the tree."

Thus much in relation to the *charge* against me; and the strange kind of *defence*, I have been constrained to make; owing intirely, to the penman of the paragraph, his having TIED, the *day of the election*, the *gallows*, and *proclamation*, all together; and (as I submit to the publick, I have *proved*, by the declaration of Mr. Anderson) KNOTTED them, with a PALPABLE LIE.

And here I should take my leave of the publick; having very little skill in writings of this kind, and much less of leisure for them, or inclination to appear IN PRINT; but that the penman of the above passage hath *lugged my name* into the paper, and I am much at a loss how to get it out again: as much at a loss am I to conjecture, why the above *remarkable passage* should compose a *part* of the *wonderful detail* of the *funeral obsequies* of the *proclamation*, for the *entertainment of the publick!* Was it intended to *hint* to the *publick*, that Mr. J. Hammond is a *favourer* of the *proclamation?* If it was, the *hint* was *unnecessary*; and the *retailer* of this *important piece of intelligence* might have saved himself and the publick the *trouble* of it: my *sentiments* with respect to that *measure* have long ago been known: the publick needed no other *information* of them, than my opposition to the address on the proclamation in the session of assembly in 1771, and my *open* and *frequent avowals* of its *propriety* ever since.

I am neither ashamed, nor afraid, to *pronounce* this my *opinion* of the proclamation, before any person, at any time, or in any place:

——"Its desert speaks 'loud, and I should wrong it
"To lock it in the wards of *covert bosom*,
"When it deserves with characters of brass
"A forted residence, 'gainst the tooth of time
"And razure of oblivion."

If I am mistaken in my notions of it, I am open to *conviction*, and promise publickly to retract my *opinion*, as soon as that desirable effect (I mean *conviction*) is wrought upon my *mind*.

"Candid men, in pursuit of truth, (as the reverend "Mr. Boucher justly remarks) would rejoice to em-"brace her, where-ever found, and would thank even "an enemy for pointing her out." This I protest is my case: "*To err* (I am conscious) is the *lot* of *humanity*; but to *refuse* to be set *right*, is the property "only of *folly*, or *something worse*." However, I must be bold to declare here, once for all, that the *arguments* which are to work *conviction* with me, must be different from those I have yet read or heard, different from those, which prevailed with us on the day of our election, against the proclamation: they must be *other*, than the *sounds* of *fifes*, *drums*, and *cannon*; the best, perhaps, that some men have to offer—and which are pretty efficacious in silencing an adversary; but which evidently tend, not to compose, but to inflame the passions; not to inform, but to deafen or stun the intellects of the hearers.

And here, in support of *freedom in opinion*, our birthright by nature, our privilege by law (a *privilege*, which nothing less than *Omnipotence* who gave it, can or ought to take from us) permit me most respectfully to ask of my countrymen, what *crime* one individual can incur, by thinking differently from another? Do we not daily think differently from each other, on the most plain and trifling matters? And is it not most likely we should be divided in sentiment, upon the more abstruse and complex subjects; such for instance (to name no other) is that of the prerogative of proclamation; a subject on which the greatest men in our mother country have formerly, and the component branches of *our own legislature* have lately, entertained a *diversity of opinion*: a subject, whose discussion hath employed our ablest pens here, and which remains still as undetermined and unsettled by the publick, as when they were first appealed to on it: for my own part, I should as soon expect to find all mankind of one and the same feature of face, cut of the beard, or coat, as of one and the same *opinion*: It is this diversity of sentiment among them, that constitutes the *source of conversation*, from whence they derive so much felicity: I hold it therefore "passing strange," that they cannot think differently about the *propriety* of *any measure*, without censure, condemnation, or reproach, on one side or the other; especially, if it were considered (which I believe is rarely done by them) that it is not in *one's power* to be of this or that *opinion*, as he pleases. *(F)* *Conviction* will not, cannot, be amenable

(A) No. 1446.

(B) I hereby declare and certify to the publick; *that Mr. John Hammond, at whose instance, I sent my people, and* cut down the gallows, *on the day of the Anne-Arundel election; gave no* particular orders, *as to its being* "burned;" *but generally, that it be* destroyed; *thereby to prevent any assemblage of the people at it, or its being applied to the purposes, that were then designed: nor did he utter a single syllable to me, at that time, or any other preceding it, concerning the* "taking up," *and* "destroying" *the* proclamation, *that had been buried by the* citizens, *(or, the* few, *that were concerned in it) as* charged *in the gazette, which he hath shewn to me; nor, have I any reason to believe, that he knew of its being there, any more than myself; (and I declare, I had not the least thought, or knowledge about it;) until it was sought for, and found by my people.*

JOSEPH HORATIO ANDERSON.

(C) Shakespeare.

(D) See his tenures, sect. 646. "*whereby, (according to the Lord Coke) it will acquire a* quality of "fame; *whereof the poet's speaketh;*

——— "*et caput inter* nubila *condit.*" *1st inst.*

(E) 1st inst.

(F) "*It depends not on a man's will, to see that black which appears yellow; nor to persuade himself, that what actually scalds him, feels cold. The earth will not appear painted with flowers, nor the fields covered with verdure, when-ever he has a mind to it: in the cold winter he cannot help seeing it white and hoary, if he will look abroad.* Just thus it is with our understanding (*saith Mr. Locke*); *all that is voluntary in our knowledge, is the employing, or with-holding any of our faculties from this or that sort of objects, and a more or less accurate survey of them: but they being employed, our will hath no power to determine the knowledge of the mind one way or other; that is done only by the objects themselves, as far as they are clearly discovered.*" (*Essay on the human understanding, book* 4. *ch.* 13. *sect.* 2.) "*Since therefore it is unavoidable to the greatest part of men, if not all, to have several opinions, without certain indubitable proofs of their truths; it would, methinks become all men to maintain peace, and the common offices of humanity and friendship, in the diversity of opinions; since we cannot reasonably expect, that any one should readily and obsequiously quit his own opinion, and embrace ours, with a blind resignation to an authority; which the understanding of man acknowledges not. For; however, it may often mistake, it can own no other guide but reason, nor blindly submit to the will and dictates of another. We should do well then to commiserate our mutual ignorance, and endeavour to remove it, in all the gentle and fair ways of information; and* "not instantly treat others ill," as obstinate and perverse, because they will not renounce their own, and receive our opinions, *or at least those,*

to one's own, or another man's, will, how ardently soever it be desired by either; nor less impossible doth it appear to me, for a man, though invested with twenty different characters or capacities instead of *two*, to entertain *two* different opinions of one and the self same thing, and at the same time, unless he be content to take *one particular character* to himself, and roundly suffer his lips, from some unaccountable motive or other, to belie his heart; in which case, if ever it hath happened among us, or could happen, one might aptly enough, soliloquise with a sentimental author (*G*),

——— "O *perilous mouths*,
" That bear in them one and the self same tongue
" Either of *condemnation* or *approof*:
" Bidding the *law* make *curtsie* to their *will*,
" *Hooking both right and wrong to th' appetite*
" *To follow as it draws.*" ———

'Tis true, that just before our election, I was desired by several to "alter my opinion," and "declare against "the proclamation," and that in consequence thereof, I might most assuredly depend on the county's continuance of the honour of a seat in the house of assembly to me: but surely my countrymen, who proffered me these terms, did not well consider the nature and import of them: Could I have prevailed on myself to *forswear*, and *sacrifice* to *popularity*, the clear *conviction* of my own mind, in relation to the tendency of the *proclamation*, my seat might have been secured by jumping in with the majority, and going with the current, at *the time* I voted against the address on *the proclamation*: but *rather* than prostitute the powers of my soul, and extinguish the clearest light of my understanding, by gainsaying or suppressing its dictates or information, for all the *honours*, that the *freest suffrages* of the *freest people* upon earth can confer; let me, in the phraze of Shakespeare,

——— "Die, and go I know not where;
" Lye in cold obstruction, and there rot;
" This sensible warm motion become
" A kneaded clod; and the dilated spirit
" ——bathe in fiery floods, or—reside
" In thrilling regions of thick-ribbed ice;
" ——be imprisoned in the viewless winds,
" And blown with restless violence round about
" The pendant world; or be worse than worst
" Of those;" ——— For,———
" The wearied and most loathed worldly life,
" That age, ach, penury, imprisonment
" Can lay on nature," ———

would be with me, far preferable, to the greatest *honours*, *the people* can bestow, under those opprobrious, dischartered and self condemning terms of acceptance. Had they given me their instructions, I most devoutly would have obeyed them, though 'thwart, or counter, to my *own* notions of the *propriety* of a *particular measure*; for such obedience I hold to be included in the *office* and *character* of a *representative* of the *people*; but uninstructed by them, and left at large, as others were, to *vote*, as our reasons directed, in relation to a *subject*, on which the *people were then, and continue still, as much divided in point of sentiment*, as the component branches of our legislature are; I cannot see, how a vote in either way, should justly subject, or entitle a man, to censure, or applause, unless it appear, that such vote was "*corruptly*" rendered; which I confess would be great and good grounds for *reproof*, and indeed, for "*something more*;" but whereof I stand clearly acquitted in my *own conscience*, as I trust, I shall, in the good opinion of every man, (if any suspicion is or can be entertained) on perusal of the following letter I was honoured with by the governor, on the day of our election, on my application to him to do me that *justice* I was hopeful to receive at his hands, and a true copy of which is here printed from the original, in the printers hands, and presented to the publick for their satisfaction:

Annapolis, Monday 24th May, 1773.

SIR,

YOU are pleased to address me with the following question, viz.

"Be pleased, Sir, to recollect whatever you have "observed of my conduct, since your arrival in this "government; say, from a review of the whole tenor "of my behaviour, whether you have ever had any "particular reason to believe that I had it in my view "to obtain an appointment to a place of honour or "profit?"

In answer to which I briefly say, that I never had the least reason to suppose you had any such views—nothing of the kind was ever intimated to me in the most distant (or any) manner, by yourself or any friend of yours—And I recollect my being desirous that you should qualify, under a commission, as a provincial magistrate, which office I deemed you very well qualified to fill, and that you declined the same, declaring that your private affairs, and the difficulty in settling with your brothers, &c took up so much of your time, that you should not be able to execute that trust or office, with the punctuality you thought due to it.

ROBERT EDEN.

Having observed thus much, in relation to the *right* which every man hath to his *own free opinion*, without the *censure*, or *rebuke* of others; even, though acting in the capacity of a *representative*, where no instructions have been received from the *constituent*; as also, with respect to *my own* conduct, in the *exercise* of that *right*, in *voting* against the *address* on the proclamation; and proved, I hope, satisfactorily to the publick, that such *vote* was not "corruptly" given; or from the *motives* of *self-interest* or *honour*, thereby to obtain an office, a place of *profit*, or *preferment* in government; I shall now take the opportunity, agreeably with my promise on the day of our election, of communicating, as briefly as I am able, to the *publick* (what was then ungenerously and ungenteelly denied me, though repeatedly requested) some of those *grounds* and *reasons*, that induced me to be of the *opinion*, I have entertained in relation to the *proclamation*; wherein, if I am wrong, it is so much the more my misfortune, having taken some pains to be right if possible: but "*wherein if I* "*am wrong*," I have my hopes, I shall be set "*right*," by men more *informed of the subject*; and which, if it be done with gentility (and not with scurrility, effrontery, and abuse; treatment, that few men in health and reason can peaceably bear, and patiently put up with) I shall esteem kind, and look on such informant as a partner in my investigations (*H*).

To come then to the point, without any further preamble or apology:

The *constitution* of our mother-country, upon whose model most of the British provincial governments here have been formed, is that of a mixed or limited monarchy, wherein the *legislative power* is lodged in the *king*, *lords*, and *commons*; and the *executive power* in the *king* alone. This is a matter, so thoroughly known, and so generally acknowledged by every British American, that an attempt to prove the position, would rather weaken, than validate it; however, if any person can entertain a doubt on the head, he may recur to the underwritten authors (*I*), and the books of law referred to by them, for his satisfaction.

To the *king*, as *supreme executive power* in the state, belong many *prerogatives*, i. e. special powers or pre-eminences, which he hath over and above all other persons, and out of the ordinary course of the common law (*K*); although they are coeval with it, being acknowledged and supported by the laws of the land (*L*): and in the *exertion* of these *prerogatives* or *powers*, consists the *executive part of government*; which is wisely placed in the royal hand, by the British constitution, "for the sake of unanimity, strength, and "dispatch."——"Were it placed in many hands, it "would be subject to many wills; many wills, if dis-"united and drawing different ways, create weakness "in a government; and to unite those several wills, "and reduce them to one, is a work of more time "and delay, *than the exigencies of state* will afford: the "king is therefore not only the *chief*, but properly, "the *sole magistrate* of the *nation* (*M*)."

We have discovered the *reason*, let us enquire next, the *ends*, for which these *prerogatives* were centered in the crown: and these were, (as our understandings must inform us, and as the underwritten authorities of law (*N*) will incontestibly prove) "*for the* "*good of the subject, and the advantage of the community.*"

That the reader, however, may acquire a clearer and more comprehensive notion of *prerogative*, I shall beg leave to transcribe, for his diligent and attentive perusal, the following paragraphs from Mr. Locke's incomparable (and, as yet, unanswered) treatise of civil government.

"Where the *legislative* and *executive* power (writes "this great man) (*O*) are in distinct hands, as they "are, in all moderated monarchies, and well framed "governments, there the good of society requires, "*that several things should be left to the discretion of him,* "*that has the executive power.* For, the legislators, "not being able to foresee, and provide by laws, for "all that may be useful to the community, *the executor of the laws*, having the power in his hands, has "by the common law of nature, a *right* to make use "of it for the publick good of the society, in many "cases, where the municipal law has given no direc-"tion, till the legislative can conveniently be assem-"bled to provide for it. Many things there are, "which the law can by no means provide for, and "those must necessarily be left to the discretion of "him, that has the *executive power* in his hands, to "be ordered by him, as the *publick good* and advantage "shall require: nay, it is fit that the laws themselves "should in some cases give way to the *executive power*, "or rather, to this fundamental law of nature and "government, viz. That as much as may be, all the "members of the society are to be preserved: *for many accidents may happen*, wherein a strict and rigid "observation of the laws may do harm (as not to pull "down an innocent man's house to stop the fire, when "the next to it is burning); and a man may come "sometimes within the reach of the law, which makes "no distinction of persons, by an action that may deserve reward or pardon; it is fit the ruler should "have a power, in many cases, to mitigate the severity of the law, and pardon some offenders: for the "end of government being the preservation of all, as "much as may be, even the guilty are to be spared "where it can prove no prejudice to the innocent."

"*This power, to act according to discretion, for the* "*publick good, without the prescription of the laws, and* "*sometimes even against it, is that which is called pre-*"*gative. For since, in some governments the law-making* "*power, is not always in being, and is usually too slow* "*merous, and so too slow for the dispatch requisite to ex-*"*cution*: and because it *is also impossible to foresee, and* "*so by laws to provide for all accidents, and necessi-*"*that may concern the publick*; or to make such laws "as will do no harm, if they are executed with an in-"flexible rigor, on all occasions, and upon all per-"sons, that may come in their way; *therefore there is* "*a latitude left to the executive power, to do many things* "*of choice, which the laws do not prescribe.*

"*This power, whilst employed for the benefit of the* "*community, and suitably to the trust and ends of the go-*"*vernment, is undoubted prerogative*, and *never* "*questioned.* For the people are very seldom, or never "scrupulous or nice in the point; they are far from "examining prerogative, whilst it is in any tolerable "degree employed for the use it was meant, that *is* "*for the good of the people, and not manifestly against* "*But if there comes to be a question, between the execu-*"*power and the people, about a thing claimed as a pre-*"*gative, the tendency of the exercise of such prerogative,* "*the good or hurt of the people, will easily decide that* "*question.*" Thus far, Mr. Locke, who hath in terms plain and explicit, chalked out to us, the nature, reason, end, and extent, of *undoubted prerogative*, suggesting also, in the close of the latter paragraph, (what I wish had long since been known to the people) the *test* or *criterion* of a due, or undue exertion of prerogative: it might have assisted them in forming *right notions* of the governor's *proclamation*, respecting the fees of officers; so loudly complained of, and so little understood; (*P*) prevented *wrong impressions* from being made on the minds of many; and others from imagining their rights were invaded and brought into jeopardy, by that measure, before they were touched. For it is to be observed here, that *proclamation* is a branch of prerogative, and doth grow from it, as a shoot from the parent trunk: in the right of exerting the *power*, consists (as I apprehend) *prerogative*; in the *act* of *declaring*, or *notifying* the exertion of such *power*, consists *proclamation*: proclamation then being evidently of the essence of *prerogative*, and participating of its *nature* and *qualities*; are *useful* for the like good and salutary *ends* and purposes in the *community*: hence, Lord Hobart, very rightly remarks, (*Q*) "that they *are so far just*, as they are made pro "bono publico, i. e. for the publick utility:" and the books seem all to agree, that the *governing power* of the state, "may in certain cases and on special oc-"casions make and issue them, for *prevention of* "*offences, to ratify and confirm ancient laws, and direct* "*the observance of them, on pain of displeasure*:" (*R*) nay, my Lord Coke, notes, (*S*) "that *proclamations* "are of great force, which are grounded on the laws "of the realm:" "for although (writes he,) (*T*) "the king by his *proclamation*, or otherways, cannot "*change any part of the common law, or statute law, or* "*the customs of the realm*, nor *create any offence*, by his "*prohibition* or *proclamation*, which was not an *offence* "*before*; (that being to alter the law of the land;) "yet he may PROHIBIT by his PROCLAMATION a "thing which is PUNISHABLE BY THE LAW, by FINE "AND IMPRISONMENT; and that as A CIRCUM-"STANCE WILL AGGRAVATE THE OFFENCE:" for, (as judge Blackstone well observes,) (*U*) "the "crown hath not any power of DOING wrong, but "merely of PREVENTING wrong from being done." "thus (in illustration of the principles above laid down "in the books,) the established law is, (writes "the same author) (*V*) that the king may prohibit "any of his subjects from leaving the realm: a pro-"clamation therefore, forbiding this in general for "three weeks, by laying an embargo upon all shipping "in time of war, will be equally binding as an act of "parliament, *because founded* upon a *prior law*. A "*proclamation* disarming papists is also binding, being "only in execution of what the *legislature has first or-*"*dained*: but a proclamation for allowing arms to "papists, or for disarming any protestant subjects, "will not bind, because the first would be to assume a "*dispensing power*, the latter, *a legislative one*, to the "vesting of either of which in any single person, the "laws of England are absolutely strangers." In one word, "In all cases (saith the Lord Coke) (*W*) the "king out of his *providence*, and to *prevent danger*, "which it will be too late to prevent afterwards, he "may *prohibit* them before; which will aggravate the "*offence*, if it be afterwards committed:" agreeably,

(*H*) "*When truth, candour, and moderation (says the* "*author of a piece, signed Brutus) distinguish the pen of a* "*writer in defence of the injured rights of a people; we* "*peruse his works, not only with attention, but even with* "*some degree of pleasure; and though conviction may not* "*always flow from the weight and pertinency of his argu-*"*ments, yet credit may be reasonably given him for the sin-*"*cerity and goodness of his intentions. On the contrary,* "*when from a spirit of envy, rancour and malevolence,* "*writers, in order to carry into execution their own* "*wicked designs, put on the mask of publick virtue, ar-*"*raign the measures of government, and endeavour by* "*falsehoods and misrepresentation, to produce convulsions in* "*the state; when by the most strained torture of construc-*"*tion, they attempt to extract criminality from the most in-*"*nocent designs, supposing their readers to be all either fools* "*or knaves, incapable of understanding their own lan-*"*guage, or wicked enough to become the abettors of sedi-*"*tion, words are too feeble to express the contempt and de-*"*testation they ought to be held in.*" *See Gazette, No.* 1444.

(*I*) *Blackstone's commentaries, vol. I. p.* 147, 154, 155. *and Bacon in his abridgment, vol. IV. p.* 149.

(*K*) *Blackstone, vol. I. p.* 239.

(*L*) 2 *inst.* 496. "*For although the stat. de prærogativa regis seems to be introductive of something new, yet for the most part, it is but a sum or collection of certain prerogatives that were known law long before.*" *Instances whereof may be read in Bacon's abridg. tit. prerogative, fol.* 149. *See also* 3 *inst.* 84.

(*M*) *Blackstone's commentaries, vol. I. p.* 250.

(*N*) *See Bower's cases in parliament, p.* 75. *Plow.* 487. *Sir Francis More's reports,* 673. *considerations on the law of forfeiture, passim; and Locke on civil government.*

(*O*) *See his treatise of civil government, fol. edit. p.* 213, 214.

(*P*) "*If this may be said, without incurring again the charge of presumption.*"

(*Q*) *Rep. p.* 251.

(*R*) *See Bacon's abr. tit. prerog. fol.* 288. *and the authorities there referred to by him.*

(*S*) 3 *Inst.* 162.

(*T*) *Case of proclamations,* 12. *rept.* 75. 76.

(*U*) *Comts. vol.* 1*st. p.* 154.

(*V*) *Comts. vol.* 1*st. p* 270. 271.

(*W*) *Case of proclamations,* 12. *rep.* 75. 76.

I ſuppoſe, with that maxim of the law, "præſtat potius cautela, quam medela."

And here I would proceed, on the grounds and authori ies of law, above adduced, to conſider the conſtitutional nature, and legal effect of a proclamation to *force an ancient*, OR PRIOR SUBSISTING LAW againſt EXTORTION and OPPRESSION in the various departments of OFFICE; and to appeal to every man of common juridica knowledge, whether a proclamation of this kind, would not be *thoroughly juſtified* on the *principles* of the caſes before tranſcribed by me from Blackſtone's commentaries; but that I am apprehenſive, may be pre-required of me, to ſhew, that the proprietary of Maryland, or his governor here, for the time being, hath a *right*, generally, to iſſue proclamations, (for that too hath been denied by ſome) before we enter on the diſcuſſion of the *particular proclamation*, in queſtion amongſt us; and that the proprietor or his governor here for the time being hath this right under the charter of our province, an extract whereof lately to be made from it, will, I truſt, clearly and ſatisfactorily evince: for I ſuppoſe, the right of the crown to grant to individuals, certain portions of territory here, whether acquired to it by occupancy, conqueſt, or ceſſion, together with "certain prerogatives, privileges and juriſdictions," will ſcarce be diſputed at this day, (after ſuch frequent experience of thoſe grants) at leaſt, by any Britiſh American, poſſeſſed of property and privilege under them; or that it can be, a little enquiry and reflection may remove all doubts.

Taking it then for granted, that the crown hath the *right*, and the *fact* of the grant of the province of Maryland being *notorious*, and of *record*; let us next conſider what *powers of government* were conferred in and with it. And beſides, the *power of legiſlation* expreſſly given, in and by the 7th paragraph of our charter, and *intirely* to be *exerciſed* "by the *proprietor*, and the freemen of our province, or of the greater part of them, or their delegates or deputies;" in conſequence whereof, our houſes of aſſembly have been eſtabliſhed in imitation of thoſe of the lords and commons of England, and the *conſtitution* of our government, formed after the model of that of the mother country in Great-Britain; I ſay, beſide the *above power*, and the *further privilege* conferred in the proprietor, by the ſame paragraph, "of appointing deputies, lieutenants, judges, juſtices, magiſtrates, OFFICERS, and miniſters *for what cauſe ſoever*, and *with what power over*, to do all and every matter and thing, belonging to the compleat eſtabliſhment of juſtice, courts, tribunals, &c." The 5th paragraph of the charter doth expreſſly inveſt the *proprietor*, "with all, and ſingular ſuch, and as ample rights, juriſdictions, privileges, prerogatives, royalties, liberties, immunities, and royal rights, and temporal franchiſes whatſoever, as well by ſea, as by land, within the ſaid iſland, iſlands, iſlets, and limits aforeſaid, to be had, exerciſed, uſed, and enjoyed, as any biſhop of Durham, within the biſhoprick or county palatine of Durham, in our kingdom of England, ever heretofore hath, had, held, uſed, or enjoyed; or of right could, or ought to have, hold, uſe, or enjoy." Theſe "royalties, privileges, juriſdictions, and prerogatives, &c." conferred on the proprietary of Maryland, by the above clauſe; I find expreſſly confirmed to him, by an act of aſſembly of our province, I mean the *act of recognition*, which paſſed anno domini, 1715 *(X)* whereby it is "publiſhed and declared," to his lordſhip, and the then aſſembly, "and enacted with the authority of the ſame; that we being bound thereunto (for I recite the words of the act, as I find them) by the laws both of God and man do recognize and acknowledge your lordſhip's juſt title and right unto this province, by the grant and donation of the late king Charles of England, under the great ſeal of England, bearing date at Weſtminſter the 20th of June, in the eighth year of his reign, anno domini, 1632. And do alſo recognize and acknowledge your lordſhip, to be true and abſolute lord and proprietary of this province. And *do humbly ſubmit unto all power, juriſdiction and authority, given, granted, and confirmed unto your lordſhip, and your heirs, in and by the ſaid grant and donation*: and *do hereby ſubmit and oblige us, our heirs and poſterities for ever, until the laſt drop of our blood be ſpent, to maintain, uphold, and defend your lordſhip and your heirs, lords, and proprietaries of this province, in the royal rights, juriſdictions, authorities and prerogatives, given, granted, and confirmed unto your lordſhip, by the ſaid grant or donation*, ſo far as they or any of them infringe or prejudice, the juſt and lawful liberties or privileges, of the free ſubjects of the kingdom of England *(Y)*. And humbly beſeech your lordſhip to accept the ſame, as the firſt fruits in this aſſembly, of our duty and thankfulneſs to your lordſhip, and your heirs and poſterity for ever. Which if your Lordſhip ſhall be pleaſed to accept and ratify by your ſelf, without which, it can neither be compleat nor perfect, nor remain to poſterity, according to our humble deſire, as a memorial of your lordſhip's intentions towards us; we ſhall add this alſo to the reſt of the unſpeakable benefits, we have received from your lordſhip's vigilancy over this colony."

Have I traced, then, the *prerogatives*, conferred by *charter*, and *confirmed* by act of aſſembly, to the

See charter 23.

This ſaving clauſe, *with another* ſimilar *to it, in the 5th paragraph of our charter; and which I have occaſion, by and by to inſert*; "*contains (as obſerved, no reſtriction more, than would have been by operation of law; nor renders his lordſhip's prerogative here, leſs forcible, than the* royal *in other colonies.*") *See votes and proceedings, October 1773, page 84. For it was never contended, that our king, or the crown, in virtue of their* prerogative, *right of impoſing taxes, (properly ſo called) on the prerogative, being given for very different purpoſes, is obſerved before out of Mr. Locke.*

proprietor and his heirs, to be *exerciſed* by him or them; "in as *full* and *ample* a manner, within our province, as *any biſhop of Durham, within the biſhoprick or county Palatine of Durham, might have exerciſed the ſame*: now let us enquire, what *powers* or *prerogatives* the biſhop of Durham is ſaid to be inveſted with, in our books; and theſe, Bracton, and the Lord Coke, will briefly declare to us; the former of whom, ſaith, that he had "regalem poteſtatem in omnibus;" *(Z)* and the latter, that he had "jura regalia." *(A)* "as fully as the king had in his palace: hence he might pardon "treaſons, *(B)* murders, and felonies: he appointed "all judges, and juſtices of the peace; and all writs "and indictments run in his own name; and all "offences were ſaid to be done, againſt his peace;" in one word, "his power and authority was king "like." *(C)* Hence, the *royal right*, the *prerogative* of *proclamation*, was *conſtitutionally* inveſted in him; and the *charter* of our province granting "*the like*, "*and as ample rights, prerogatives and powers, to our* "*proprietary, to be exerciſed here by himſelf, or his* "*governor*;" I think, we may as fairly conclude, that each of them hath, *indiſputably in them*, the *power* and *prerogative of proclamation*.

But we might have ſaved ourſelves the trouble of this deduction of the *power*, or *prerogative of proclamation*, by argumentative inference, from the *palatinate of Durham*, to the *province of Maryland*: for the eighth ſection or paragraph of our *charter*, doth (I ſubmit to the intelligent reader;) inconteſtably give it; though inſerted at large in the addreſs of the houſe of delegates, to the governor, at the ſeſſion of aſſembly in 1771, *(D)* to prove the very reverſe. Its words are as follow. "And for as much as, in the government of "ſo great a province, *ſudden accidents* may frequently "*happen*, to which it will be neceſſary to *apply a re-*"*medy*, before the *freeholders* of the ſaid province, "their *delegates, or deputies, can be called together for* "*the framing of laws*; neither will it be fit that ſo "great a number of people ſhould immediately, *on* "*ſuch emergent occaſion*, be called together, we there-"fore, *for the better government* of ſo great a province, "do will and ordain, and by theſe preſents, for us, "our heirs and ſucceſſors, *do grant unto the ſaid now* "baron of Baltimore, and to his heirs, that the "aforeſaid now baron of Baltimore, and his heirs, by "*themſelves*, or by their *magiſtrates* and *officers*, there-"unto duly to be *conſtituted* as aforeſaid, may, and "can make and conſtitute *fit* and *wholeſome ordinances* "from time to time, to be *kept* and *obſerved* within "the province aforeſaid, *as well for the conſervation of* "*the peace*, as for the *better government of the people* "inhabiting therein, and *publickly to notify the ſame*, "to all perſons, whom the ſame in any *wiſe do or may* "*affect*. *Which ordinances* we will *to be inviolably obſerved* "within the ſaid province, *under the pains to be ex-*"*preſſed* in the ſame. So that the ſaid ordinances be "conſonant to reaſon, and be *not repugnant nor con-*"*trary*, but (ſo far as conveniently may *be*,) *agreeable* "*to the laws, ſtatute, or rights* of our kingdom *of Eng-*"*land*; and ſo that the ſame ordinances, do not in "any ſort, extend to oblige, bind, charge, or take "away the right or intereſt of any perſon or perſons, "of, or in member, life, freehold, goods or chattels."

Whether this *ſection* of our *charter*, be *applicable* to the purpoſes, for which I have adduced it; I mean, to *evince*, the *rights* of *prerogative* and *proclamation*, in our *proprietor*, or his *governor* here, for the time being; I muſt ſubmit to the judgment of the diſcerning reader, on his re-peruſing the tranſcript I made above from Mr. Locke, and comparing it with this extract from the charter.

I remarked before, in a note, that this ſaving clauſe in the latter part of the 8th ſection of our charter, imported no other *reſtriction* of the proprietary prerogative, than what would have been *implied* by *law*, had it not been inſerted: for the *prerogative of the crown*, in making ORDINANCES, "not extending (as I ap-"prehend) to oblige, bind, charge, or take away the "right or intereſt of any perſon or perſons, of or in "member, life, freehold, goods or chattels *(E)*;" conſequently ſuch a *power* could not be intended by the *crown*, to be *imparted* to its *grantee*; and therefore the *ſubject*'s right to theſe matters is reſerved to him; in the contemplation of the law, although no expreſs mention had been made of them. And hence we may obſerve, that the *ordinances*, which the proprietary of our province is authorized, either "by *himſelf*, his *ma-*"*giſtrates*, or *officers*, to *make and conſtitute*, and *pub-*"*lickly to notify*" (on *ſudden accidents* or *emergent occaſions, for the conſervation of the peace*, and *better govern-*"*ment of the people*, when the *law making powers* cannot conveniently be aſſembled, or convened) are, in the expreſs terms of the charter, directed to be ſuch, "*as be* "*conſonant to reaſon, and not repugnant or contrary, but (ſo* "*far as conveniently may be) agreeable to the laws, ſta-*"*tutes, and rights of the kingdom of England*. Conformable to what we have before laid down from the law-books

(Z) Vid Bracton. l. 3. c. 8. §. 4.

(A) 4 inſt. 204. 205.

(B) Though theſe powers *of the counties palatine have ſince their creation been abridged by ſtat. 27. Hen. 8. ch. 24.* "*The reaſon (ſaith Dr. Blackſtone) for their continu-*"*ance in a manner ceaſing: though ſtill all writs are* "*witneſſed in their names, and all forfeitures for treaſon* "*by the common law accrue to them.*" *1 vol. of his comt. p. 117.*

(C) 4 inſt. 205. 218.

(D) See votes and proceedings, October ſeſſion 1771, page 63. 66.

(E) See 2 inſt. 60, 61, 62, 63. 3 inſt. 84. and 4 inſt. 28, 30, 301. and Plowden, fol. 361. who ſaith, "*That* "*the common law* hath ſo admeaſured *the* king's prero-"gative, *that they ſhould not take away, nor prejudice* "*the inheritance of any.*"

"*Non poteſt rex ſubditum restringere imperitio-*"*nibus.*" *Fortescue, c. 9. and 28.*

And in the caſe of proclamations, 12 rep. 76. "*it was* "*reſolved, that the* king hath no prerogative, *but that* "*which the law of the land allows him.*"

(F), viz. "That the king (and conſequently the pro-"prietary of our province, his grantee) cannot, by "his proclamation or otherways, change any part of "the common law, or ſtatute law, or cuſtoms of the "realm; nor create any *offence*, by his prohibition or "*proclamation*, which was not an offence before (that "being to alter the law of the land); howbeit, the "king" (and therefore our proprietor, or governor here for the time being) "may well *prohibit* by his *proclamation* a *thing* which is *punishable* by the *law*, by "fine and imprisonment; and that as a circumſtance "will aggravate the *offence*:" For (as Judge Blackſtone well remarks) *(G)* "though the *making of laws* "is intirely the work of a diſtinct part, the *legiſlative* "*branch* of the *ſovereign power*; yet the *manner, time*, "and *circumſtances of putting thoſe laws in execution*, "muſt frequently be left to the *diſcretion of the execu-*"*tive magiſtrate*; and therefore his *conſtitutions* or *edicts* "concerning theſe points, which we call *proclamations*, "are *binding upon the ſubject, where they do not either* "*contradict the old laws, or tend to eſtabliſh new ones*; "*but only enforce the execution of ſuch laws, as are al-*"*ready in being, in ſuch manner as the king* (and I add "our proprietor, or governor, here) *ſhall judge neceſ-*"*ſary.*"

Let us now then, without more adu, recite the *particular proclamation* in queſtion, and put its *legality* to the *teſt*, on the *principles* and *grounds* of law, eſtabliſhed in the law books from whence I have made my *extracts*; for, I flatter myſelf, the reader, by this time, is pretty well ſatisfied with our deduction of the conſtitutional rights of preroga ive and proclamation from the crown, by charter to our *proprietary*, to be *exerciſed* here, by *himſelf*, or *his governor*; eſpecially as he hath ſeen *thoſe powers* (with ſundry others) *confirmed* to him by act of aſſembly of our province, herein before inſerted; and whoſe *force* and operation, at leaſt, will not, I guels, be denied. The words of the proclamation are as follow:

"Being deſirous *to prevent any oppreſſion and extor-*"*tions from being committed, under colour of office*, by any "of the officers and miniſters of this province, and "every of them, their deputies, or ſubſtitutes, *in ex-*"*acting unreaſonable and exceſſive fees from the good peo-*"*ple thereof*, I have thought fit, with the advice of his "lordſhip's council of ſtate, to iſſue this my proclama-"tion: and I do hereby therefore order and direct, "that from and after the publication hereof, *no officer* "*or officers* (the judges of the land-office excepted, "who are ſubject to other regulation to them given in "charge) *their deputies or ſubſtitutes*, by reaſon or co-"lour of his or their office or offices, have, receive, de-"mand, or take, of any perſon or perſons, directly or "indirectly, any other or greater fees, than by an act "of aſſembly of this province, intitled, "An act for "amending the ſtaple of tobacco, for preventing "frauds in his majeſty's cuſtoms, and for the limita-"tion of officers fees," made and paſſed at a ſeſſion of "aſſembly, begun and held at the city of Annapolis, "on Tueſday the fourth day of October, in the year "of our Lord ſeventeen hundred and ſixty-three, were "limitted and allowed; or take or receive of any per-"ſon or perſons, on immediate payment, (in caſe "payment ſhall be made in money) any larger fee, "than after the rate of twelve ſhillings and ſix pence "common current money for one hundred pounds of "tobacco, under the *pain of my diſpleaſure*. And to "the intent that all perſons concerned may *have due* "*notice thereof*, I do ſtrictly charge and require the "ſheriff of the city of Annapolis to make this my "proclamation publick in the ſaid city, as he will an-"ſwer the contrary at his peril. Given at the city of "Annapolis this 26th day of November, in the twen-"tieth year of his lordſhip's dominion, anno Domini "1770."

And here I would aſk the ableſt and loudeſt bellower againſt the *proclamation*, whether an *ordinance* "*to pre-*"*vent oppreſſions* and *extortions*," in the various de-"partments of *office*, be of "*good or bad tendency?*" For, ſaith Mr. Locke, in our tranſcript from him above, "when-ever there comes to be a *queſtion*, be-"tween *the executive power* and the *people*, about a "thing, claimed as a *prerogative*; the *tendency* of the "*exerciſe* of ſuch *prerogative* to the *good* or *hurt* of the "*people* will *eaſily decide that queſtion*." Was it then (I aſk) for the *good* or *hurt* of the *people* of our province, that the *wiſdom and authority* of the *executive power* ſhould be conſtitutionally interpoſed to guard them from "the *extortions* and oppreſſions of the officers and "miniſters here, and every of them, their deputies or "ſubſtitutes, in *exacting*, under colour of office, un-"reaſonable and exceſſive fees" from them? Or, more briefly, in other words; Was it for the *benefit* or *diſadvantage* of the *people*, to be enabled by *legal authority* (for the *right* of *proclamation* I truſt I have inconteſtably ſhewn to be in the proprietary, or his governor here for the time being, to be *exerciſed* by them, as the *emergency of government may require*), to pay *reaſonable* and *moderate*, rather than *unreaſonable* and *exceſſive fees?* And would the *ſilence* of the governor, which probably might have been conſtrued into an *allowance* of, or at leaſt a *connivance* at, the *exaction* of ſuch *immoderate fees*, have been productive of the *ſame good effects* to the *people*, as his *proclamation*; which expreſſly reſtrains their being taken, "under pain *of his diſpleaſure?*" And which reſtrained their being taken, too, at a time when the old inſpection law, that contained the *rates of fees*, had expired among us; at a time, when, from an unhappy diſagreement between two of the component branches of our legiſlature, no *new table of fees* could *be ſettled by them*; at a time, when, in conſequence of this *defect in government*, and through *want of the reſtriction of ſome poſitive law*, the *officers* were *left at large* to riot with the *property* and *purſes* of every man, that might have occaſion to do buſineſs in their offices: at that time, at that unlucky æra of our province, and critical conjuncture of af-

(F) See Bacon's abr. tit. prerogative, fol. 239. and the books referred to by him.

(G) Commentaries, vol. I. p. 270.

fairs, I would fain know of any reasonable and unprejudiced person, whether he does not think, there were great grounds for the seasonable *exercise* of that *authority* which the *law and constitution* have placed in the hands of the *executive power* here, to check in their bud *those evils of office*, which otherwise, it might well be expected, would soon have blossomed, ripened, and yielded from the pockets of the people, an exuberant harvest of *fees* to the *officers*? And what other *mode* of checking *those evils* (I would gladly be informed) hath the *constitution* of our *mother-country*, or that of our *province* provided, *save only that by proclamation*? "*Silence*," as we observed before, we have cause to suspect, would be *unproductive* of any, but *bad effects*: "*Letters missive*," to restrain the *exaction* of *officers*, are rarely practised in Britain, or with us: And a "*whisper*," could we *pen* one, like that of Mr. *Bayes* for his "*state physicians*," would seem a disuitable method of *communication* here, and properly *useable* only by his own "*ministers*." or their "*royal masters*," the "*two kings of Brentford*." *Proclamation*, then, I conclude to be the *regular step* the *governing power*, with us, could pursue, of *declaring* or *notifying* his *assent* or *dissent*, with relation to any matter or thing he would *publickly* command or forbid.

Thus far (it would seem) we stand pretty well justified, with respect to the *manner* of the *prohibition*: with respect to the *matter* of it, we are still clearer. If "*oppression* and *extortion*" are *offences* punishable by the *laws* of the *land*, and that they are, the law-books speak aloud (*H*), and too frequent experience doth sadly evince: then, I have no *doubt*, in *declaring my opinion*, "That a proclamation prohibiting these offences, being grounded," as the lord Coke saith (*I*), "on the laws of the land;" or as Judge Blackstone expresseth it (*K*), "being made to enforce a *prior* "subsisting law" among us, against these offences, is constitutional, legal, beneficial to the people, and obligatory, to all intents and purposes, upon *such* as are the *objects* of it; and consequently, that the "governors proclamation," being issued for these purposes, and grounded on the actual existing laws of the land, is, with respect to the *officers*, who are declaredly the objects; and only objects of it, constitutional, *legal*, beneficial to the people, and obligatory on the officers, to all intents and purposes whatever." Which was the point I was to endeavour to prove, or at least to maintain, as well as I was able, in my *opinion*.

But, here I am apprized, it will be flung out at me, (as I have frequently experienced in *discourses* on this *subject*) that my *opinion* is, and must be *concurrus*, being *contradictory* to the sense of the lower house of assembly declared on this point, in the October session 1771; when, it was "resolved unanimously, That the *proclamation*, issued by the governor, with *the advice of his lordship's council of state*, on the 26th day of November 1770, was illegal, arbitrary, unconstitutional, and oppressive (*L*)." What were the *assigned reasons*, that induced the house to enter up this *resolve*, I know not; being absent from it, through *sickness*, at the time the resolve was made: but if the reasons that led to it, were not more cogent than those I heard offered, in the course of the debate in support of the *address* to the governor on the *proclamation*; I frankly confess, had I been in the house, when the above resolve passed; it should have shared the *fate* of the address with me, and been *stamped* with my *negative*, though I had stood *sing e* in the opposition to it. Whether this *resolve* will, or will not, *bear down my opinion*, it is for others, not for me, to determine.

"But, in our circumstance and course of thought, (*M*) (if conjecture may be indulged) it will with *some folks* prove very "heavy." For *men* there are with us, and not inconsiderable in *number* too, who *seeing*, *hearing*, and *understanding*, by the *powers* and *faculties* of the *representative*, esteem every act, every *resolve* of the lower house of assembly, as *sacred* and *unquestionable* (*N*): never *examining*, they *never acquire any knowledge*; and taking every thing upon trust, *faith* becomes their bulwark: "These men (saith Mr. Locke) "(*O*) like the common soldiers of an army, are attached to this or *that party*, to this or *that opinion*, "to this or that side of *the question*, and shew their "courage and warmth, as their commanders direct, "without ever *enquiring* into, or so much as "*knowing* the *cause* they *contend for*; it is enough for "them to obey their *leaders*, to have their *hands* and "*tongues* ready, for the support of the *common cause*, "and thereby approve themselves to those, who can "give them some little credit, countenance, and assurance in the community: thus they become *professors* of, and *combatants* for, *opinions*, they never "were *convinced* of, nor *proselytes* to; *no, nor ever had* "*so much as floating in their heads*."——"Such earthy "minds as these, like mud walls, resist the strongest "batteries; and though perhaps sometimes, the force "of a clear argument may make a little impression, "yet they nevertheless stand firm, and keep out the "enemy *truth*, that would captivate or disturb them."

——"A man might more justifiably throw up cross "or pile for his *opinions*, than take them by such mea"sures;" as if the *immutable nature* of *right* and *wrong* was to shape and vary itself, to the various faces and as variant opinions of mankind; or was dependant on the *voice* of a *majority* or *minority* in a house of assembly, uttering the bare syllables of yea or nay concerning it!

Other men, I confess, there are, of different casts and complexions from those above described; and who, being moulded of purer or more refined clay, observe a purer and different conduct in every action of their lives. Conscious of the frailty, and not strangers to the depravity of human nature, they refuse to repose an implicit confidence in the *declarations* or *resolves* of one individual; or of one thousand of them assembled together, (how *unanimous* soever they be) on a *questionable point of great constitutional importance*; being convinced by daily experience, that the ablest men are liable at times to deception and error, and frequently to be agitated and swayed by passion or prejudice, or warped in their notions and judgments, by *self interest*, *popularity*, and other private springs of action, that are artfully concealed from ordinary sight. Such men as these, disdaining to pace in trammels, and to submit the faculties of their souls to a state of mental bondage, freely cast about them, examine all things to the bottom, and "hold fast that, they esteem right:" endued with *reason* for the purposes of information, they exercise it for the attainment of that desirable object; and not content lazily to sit down, with scraps and crumbs of begged or borrowed opinions, they form their *own* of the *rectitude* or *obliquity* of any *particular measure*, that hath been pursued, not on the hearsays or declarations of this or that set of men, respecting it, but on the *nature* and *tendency* of such measure, to promote or prevent the good and happiness of the people in the community: *These men* can readily, but not without reluctance, call to sad remembrance, the times, when a *majority* of great and wise men, in the most august assembly (perhaps) in the world, established, in opposition to a feeble *minority*, a *stamp-act* on *America!* when they passed the act of parliament, declaring the *dependency* (the reader will be pleased to supply from his memory the remaining part of its title) with all its train of consequences on us! when the *like* or *same majority*, *suspended*, by act of parliament, the *legislative powers* in *New York!* and, when a "*majority*," in the *commons house*, *excluded*, by their "*resolve*," Mr. Wilkes his seat there, though elected and returned, under a *superior number* of *free suffrages*, and admitted colonel Luttrel under an inferior to, and do continue him still in, it, contrary to the representations of the *freeholders* of Middlesex! In all these instances, and many more that might be adduced, I would fain ask *some persons* among us—Who they esteem to have been *right*; the *majority* who proposed, and carried these *measures*; or the *minority* who opposed, and voted against them? And their answer shall, if they please, determine the fate of my poor opinion, whether it is, or is not to be crushed to pieces, by the *weight* of that *resolve*, that hangs louring over it. For my own part, although I clearly hold, that all due respect is to be paid to the *resolves* of either or both houses of our *assembly*, yet I hope, I shall give no offence, when I declare, that I never have been yet, and I trust I never shall be, able, to look upon them in the *light of laws*, (especially with respect to such persons, as are not *members* of either house) "how assertive soever they be in opinion, or "vehement in expression;" nor yet, (what's more) that the *framers* of them are *inspired* or *infallible men!* And as I see no *reasoning* in them, or in the *address* to the governor grounded on some of them, respecting his proclamation, to induce an *alteration* of my *opinion* of it; so I acknowledge, no *authoritative power* in either, to preclude me from *declaring* my opinion in the manner I have done: nay, I protest, had not some persons, from an overweening fondness of the *resolves*, (whether *real*, or *affected*, I cannot pretend to say) held them forth to the *people*, as the only genuine and authentic *documents*, whereby to form their judgments, in relation to the *proclamation*, I should have passed them by unnoticed, not doubting, but the intelligent reader, without being reminded of it, would naturally have assigned its *due weight*, to the *declared sense* of each of the *three component branches of our legislature*, with respect to the *nature and tendency* of *the above measure*; and consequently, that two of them, (the governor and upper house) being fully *satisfied* of the *constitutionality*, or *legality* of the *proclamation*, he might think himself well *justified*, in adopting this *sentiment*, if *weight* and *authority* are to influence, and prevail (with him as with some others) in the *scale* of *determination*.

Thus, it seems, that my opinion, which, "prima "facie," was much endangered, and like to be overlaid by the above *resolve*, is better supported and protected, than *some* have imagined; it hath *two* to *one*, (*P*) to give the *plate* on its side of the *beam*, a *preponderancy* in its favour; unless the *following resolve*, equally *extraordinary* with the *former*, and which comes close at its heels, be construed to *detract* a part of its *momentum*: viz. "Resolved, That the *advisers* of the "said *proclamation*, are *enemies* to the *peace*, *welfare*, "and *happiness* of this province; and the *laws* and "*constitution* thereof (*Q*)." "An heavy charge! "(writes his excellency) (*R*) but happily a charge, "*that marks the temerity and rage of the promoters of it*; "but is *devoid of proof*, to fix the imputed guilt of the "accused, to whom I pay no great compliment, when "I say, that they are animated by an tender regard "for the peace, happiness and constitution of this "province, as the *framers* of the *address* and *re*"*solves*."

I have ever apprehended, that *prudence* and *moderation*, were, or at least ought to be, the *distinguishing characteristicks* of men invested with *legislative powers*; "and that *mankind* generally find their account better "in *mediums*, than in *extremes* (*S*)." I have read, (*T*) that when Sol gave leave to Phaeton to drive his glittering chariot; he counselled him to this effect: "Ascend not too high, least you burn the heavens; descend not too low, least you inflame the earth; go not too much to the right, nor too much to the left; but keep the *middle way*, for that is *safest*:"

——"O, but man! *proud man*,
"*Dress'd in a little brief authority*,
"*(Most ignorant of what he's most assur'd)*
"——like an angry ape,
"Plays such *fantastick tricks* before high heav'n
"As make the angels weep (*U*)."

Forbearing then, here, any further *observations* of the kind, (though there is great room for them) we will again resume our *considerations* respecting the *proclamation*.

I have "endeavoured" to shew, and I trust not altogether unsuccessfully, That upon the lapse of the old *inspection law*, in 1770; when from an unhappy *disagreement* between the *two houses* of *our assembly*, no new *regulation* of *fees* could be fallen on, the peculiar circumstance of our province, at such a conjuncture, required the aid, and seasonable interposition of the *executive power*, to guard and protect the *people* thereof, against the *exorbitant demands* and *exactions* of fees by the *officers* of government, in its various departments; that the officers were then (and without the *proclamation* must have continued) under no kind of *restriction*, with respect to the PRICE, they might set on their SERVICES; and that therefore, the *people*, in order to have got their business *done* by them, must have paid them, whatever they thought proper to ask for it; or have consented to let their business go undone; that the governor at this crisis, was LEGALLY and constitutionally invested under the charter of the province, confirmed by act of assembly, with all necessary PREROGATIVE, to restrain the exorbitancy of the *officers* demands; and that the DUTY of *his* STATION then required the EXERCISE of it; that it could be EXERCISED consistently with the *laws* of *Great Britain*, adopted by our *province*, and agreeably with our *charter*, in no *manner*, so *regularly*, as by ORDINANCE or PROCLAMATION; and that such ordinance or proclamation, *grounded* on the *actual subsisting laws* of the *land*, against the OFFENCES of EXTORTION and OPPRESSION, and issued to PREVENT THE COMMISSION OF THEM, by the OFFICERS, was CONSTITUTIONAL, LEGAL, BENEFICIAL to the PEOPLE, in whose behalf it was made; and OBLIGATORY on the OFFICERS who were the SOLE OBJECTS of it, to all intents and purposes whatsoever: This, I say, I trust, I have "altogether unsuccessfully," attempted to shew, in the course of my opinion, from the best CONSTITUTIONAL WRITERS on the subject, and the soundest PRINCIPLES and AUTHORITIES of law, laid down in our books, illustrated by a SPECIAL CASE or two which evidently hinge on those very principles.

How the people came to be *alarmed*, and such a *clamour* raised against a *measure*, most manifestly calculated to *promote* their *interests*; if they inclined to take *advantage* of it, as most of them, amidst their complainings, have done; and without which, they neither are, *actually* or *intentionally* the *objects* of it, nor are, nor can be, *immediately*, or *remotely* affected by it; might easily be disclosed here, did it fall within the province of my *opinion*: but it is clearly without it: I shall therefore content myself with briefly referring the inquisitive reader to the votes and proceedings of the sessions of assembly in 1770; where he may probably acquire an imperfect idea, of what, I have at this time, a full, clear, and adequate conception.

I said just above, that the *people* were not, but the *officers* were, *declaredly*, the *intentional* and sole *objects* of the *proclamation*: I here submit this point (as much depends on it) to the *determination* of the public, on their re-perusal and re-consideration of the *plain*, *unambiguous words*, in which the *proclamation* is conceived, and the equally *plain*, and unambiguous *sense*, *meaning*, and *import of those words*.

Where WORDS are FULL and CLEAR (as I conceive those of the PROCLAMATION are,) every species of construction, every mode of *interpretation*, are to be *excluded* with respect to them; *words* being the common signs, that mankind make use of, to declare their thoughts and intentions one to another; when the words of a man express his meaning, according to the usual import of them, plainly, distinctly, and properly; there cannot, consistently with common sense, be any grounds for *construction*, or *interpretation*; and I am with agrees, a maxim, frequently to be met with in the law books; viz. "*Quoties in verbis, nulla est ambiguitas, ibi nulla expositio, contra verba expressa fienda est*:" for, the law, saith the Lord Coke, "*will not make an exposition against the express words and intention of the party*." And it would seem to me, strange and extraordinary if it should not be so: strange, and extraordinary, doth appear to me the following *paragraph*, in "the humble *address* of the "house of *delegates* to the governor;" (the *address* against which I voted, and for my vote, lost a seat, was very willing to resign;) "your excellency's

(*S*) Montesquieu's spirit of laws, book 11. c.
(*T*) Vid. Ovid. metam. lib. 2.

Nec preme, nec summum molire per æthera currum,
Altius egressus, cælestia tecta cremabis;
Infelix turas, *medio tutissimus ibis*.
Neu te deterior tortum declinet ad anguem,
Neve sinisterior pressam rota ducat ad aram;
Inter utrumque tene.

(*U*) Shakespeare.
(*V*) 2 Inst. 147. a.

(*H*) *See* 1 *inst.* 368. *b.* 2 *inst.* 210. *and Bacon's abr. vol. II. p.* 453. *and vol. III. p.* 744. *and the books and authorities there referred to by him.* "Extortion *is said* "*to be more odious than* robbery; *robbery being apparent*, "*and wearing the face of a* crime; *whereas* extortion "*puts on the* visor *of virtue for expedition of justice, and* "*the like*; *and is ever accompanied with that grievous sin* "*of perjury*." 2 *inst. ibid. It is* punishable *by imprisonment*, fine, *forfeiture of office, &c. See the above books.*
(*I*) 3 *inst.* 162.
(*K*) 1 *vol. commentaries, p.* 270.
(*L*) *See votes and proceedings, October session, 1771, p.* 20.
(*M*) *Shakespeare's Hamlet.*
(*N*) "*Tis by these men (as a friend of mine very justly observes in a late letter received from him relative to our election)* "*That I have been treated with a severity unknown even in the land of Turkey! for there, they rarely condemn a man* unheard, *or upon an* ex parte repre"sentation; *and never refuse him a* hearing *by way of* defence *and* justification, *if requested by him, however they may* have pre-determined *to* dispose *of him*."
(*O*) *Essay on the human understanding.*
(*P*) *The* weight "*of the* governor *and* upper house," *against* "*the lower house*."
(*Q*) *See votes and proceedings, Oct. session, 1771. p.* 20. "*Who the* "*advisers*" *are, may be learnt by recurring* "*to the former resolve*."
(*R*) *See votes and proceedings, 1771, p.* 33.

" clamation—we *apprehend unconstitutional* in the *matter*, and *shadowed* in the *manner* with the *assigned reason* to *prevent extortion* by the officers, in *imitation* of *the practice* of *arbitrary kings*, who in their proclamations, which have been declared illegal, generally *covered* their *designs*, with the *specious pretence* of *publick* good *(W)*." What *part* of the governor's proclamation (I should be glad it were *pointed* out to the *publick*) doth, or can *justify* the "apprehension," that is here declared to be entertained of it? Was it, or was it not—for the *good* of the *people*, that the *officers* should be *restrained* from *acts* of *extortion* and *oppression*? Was it, or was it not for the *good* of the *people*, to be indiscriminately allowed to discharge their *fees of office* in cash or tobacco, at their option? And that the *planter* should stand on the same fair *and equal* footing with the *farmer*, and be privileged to pay the *officer*, his *dues*, in money at the rate of 12*s* currency, for every 100 wt. of tobacco, owing by him; and which at that time, at the expiration of the old inspection law, in 1770, and since, sold, as I have been informed, and I believe with truth, transfer tobacco, from 18*s* to 19*s*, currently; and crop tobacco, from 30*s* to 30 odd shillings, per centum? Was it, or was it not—for *the good of* the *people* to be enabled to pay at *these easy rates*; in case, *they inclined?* and was it not manifestly to the *dis-interest* of the *officer*, to be *constrained* to *receive at* them *(X)*. Wherein then, is the proclamation "*shadowed?*" Or, how doth it appear to have been issued, "*with* "*the specious pretence of publick good?*" Doth it not *actually* give those *advantages* to the *people*, in the payment of the *fees* of *officers*, in case they incline to make use of them? and are not these, "*advantages*," which the *people* had not generally, under the old *inspection* law? Which allowed them only to the *farmer*, but *sicked* them up from the *planter*: and would the *people* have been enabled to have paid *the officers*, on any other, or better *terms*, even had the *new inspection bill* passed into *a law* in the session 1770? *Did that* provide to give more than the *alternative*, which the proclamation expressly giveth? The publick are requested, to weigh well these questions, and then to pronounce upon them.

If the proclamation hath afforded these *advantages* to the *people*; no less *beneficial* hath it *proved* to them, in *removing* all *grounds* of *litigation* and *contest* between them and the *officers*, which must inevitably have ensued from the *different rates*, each would be inclined to annex to the *service* performed by the latter: nor doth the following *resolve* of the *lower house*, contribute in the sentiments of some men, to *lessen*, but rather to encrease *law suits* in the *community*. "*Resolved* "*unanimously*, that in all cases where no fees are established by law for services done by officers, the "power of ascertaining the quantum of the reward "for *such services*, is constitutionally in a jury upon "the action of the party *(Y)*." Let us suppose then, a *service* requested by the party, and *performed by the officer*, in expectation of *due payment for it*: the party tenders, agreeably, with another *resolve* of the lower house, viz. "That the fees to be allowed to the "several *officers* in this province, shall be as follow"—to wit, by the "*new table (Z)*;" the officer insists on being paid agreeably with the "*old table*:" neither will depart a jot from the respective "tables," adopted by them as their *standard* for the payment of fees, to compromise the matter between them: What's the probable consequence? A law suit, if the amount of *charge* will reach to it; wherein, perhaps, neither of the "*tables*" may be regarded by a *jury* in their *verdict*; or if regarded, *another jury*, on the like matter, may think very differently from the former jury; whereby, the point in controversy remains as unsettled as ever, and the *people* and the *officers* are left open to *perpetual contest* about the *rates of fees*, much to the detriment of the *interests* of each, and the *disturbance* of the peace of the *community*; but greatly to the advantage of our "state lawyers," who pushed forward this *publick resolve*, for the promotion of their own "*private gains*." Is it for the good of the *people*, that endless litigation should be prevented having any foothold among them? If it is, and I guess, it will be denied but by a few; then it follows, that the proclamation, by *establishing* the *most easy* and *equitable rates* of *fees*, that ever prevailed in our province, stops the career of *suits* among us; hath been much *misconstrued*, and *misrepresented* to the *publick*, who ought ever to receive the justest and truest information of the *nature* and *tendency* of a *measure*, on which it is to pass *judgment*; and to view it through *a fair and clear*, and not through a *clouded or foul medium*: but not only hath the proclamation "been censured in outrageous terms "of resentment;" and the *plain words* of it, (quite different from their *purport*;) by a *tortured construction*, been made to mean, what they will not bear; but every *friend* to it, denounced a *foe* to the *province*: nay, the *author* of it, who dignifies the exalted station in which he presides, hath not been able to avoid the obloquy and defamation, of the thousand mouths, the thousand tongues, and iron lungs of some men:

"Oh place and greatness! millions of *false* eyes
"Are stuck upon thee! *volumes of report*
"*Run with their false and most contrarious quests*
"*Upon thy doings: thousand jeapes of wit*
"*Make thee the father of their idle dreams,*
"*And rack thee in their fancies!*"

"*No might nor greatness in mortality*
"*Can censure 'scape: back-wounding calumny*
"*The whitest virtue strikes! What king so strong*
"*Can tie the gall up in the slanderous tongue?* *(A)*

"I was not (writes his excellency, *(B)* so rash as to "promise, or sanguine to expect, that any *measure* I "could pursue, would *divert the aims of faction*, or "appease *the rage of disappointment*. The *plain view* "*of the address* was, that the *loss of the inspection law* "might be aggravated by the *confusion and vexation*, "which would naturally arise from the *total want of* "*every kind of regulation*. Let it be supposed *that* "*actions should be* brought for the *establishment* of each "*fee*, or *that officers should be prosecuted* for *extortion*, "*who would be benefited by the litigation? Not the com*"*munity in general*. Such contests would hardly be "deemed *by friends to the peace, welfare*, and *happiness* "*of this province*."

"Twas for the very purpose, therefore, of *regu*"*lating the conduct* of the *officers*, in the *article* of their "*fees*, to *point out to them what they might*, and *beyond* "*which they should not demand*; that I issued my "(shadowed, as you call it) proclamation:" "for it "must be admitted, that without some *rule* to con"troul the demands of *officers*, there would be great "danger of *extortion*, and of *perpetual contest*; the "timid might submit to the most *grievous oppression*, "and the turbulent refuse to pay the most reasonable "demand *(C)*." Indeed, without such *regulation* of *fees* by *proclamation*, I do not clearly see how *right* and *justice* could have been *fully* administered in our *courts*: I will endeavour to explain myself: our judges and justices are bound by oath, "to do equal law and "right to all the king's subjects, rich and poor, ac"cording to the laws, customs, and *directions* of the "*acts of assembly* of this province, so far forth as they "provide." (See the act for ascertaining the form of the oath of judge or justice, passed—1732. ch. 5.)

Now it is *directed* by *perpetual laws* of this province, as follows.

1st. "That security *shall be given* for *payment* of all *officers fees*, accruing by any suit commenced in any county court by the plaintiff, in case he doth not reside in that county; or in default thereof, or of his attorney's signifying his intention of *paying* the same, to suffer non-suit." This by act of assembly in 1715. ch. 48. sect. 12.—again,

2dly. "Any person or persons may order out process in their own names, without any titling from an attorney, such party or parties suing out the same, if non-residents within this province, *securing to the secretary, or the clerks of the several county courts, and all other officers* their *lawful fees*." This by act of assembly in 1716. ch. 20.—and further,

3dly. By act of assembly in 1731. ch. 15. It is enacted, "That from and after the end of this present session of assembly, all *the several and respective officers* within this province, shall be, and are, by virtue of this act, *obliged*, to draw out the *particulars* of their fees, in a fair legible hand, and in words at full length; and on failure thereof, such *officer* to lose such *fees* so expressed in words cut off or abreviated. And that the *several clerks* of the *several courts of record*, *register of the court of chancery*, and *register of the commissary's court*, within this province, shall be, and they are hereby *obliged* to deliver to the defendants, if required, *full copies*, in a fair legible hand, of *all the costs of suit* recovered against such defendant, under penalty of forfeiting and paying the sum of 2000 pounds of tobacco," to be applied as this law directs.

And here I would fain be informed, how each of these *acts*, or the above recited *parts* of them, are to be *complied* with: Was there at present *subsisting* among us, no *regulation* or *establishment of fees*, by *proclamation*, for the *guidance* or *direction* of the *conduct* of *the officers?* The *rates* of *fees*, which prevailed at the passage of these laws, fell, as I apprehend, with the laws that gave them, at the time our first inspection law was enacted: the inspection law, with its *rates* of *fees*, hath since fallen: the "new table of fees," framed by the lower house in the session 1770, hath *no legislative sanction*; and had not the *prerogative of proclamation* been happily interposed by the *governing power* in this *emergency of our province*, to *give relief*; it would seem, to me, that the above acts of assembly must have lain dormant, or been suspended in their respective operations, or else that the *judges* must have given them efficacy and vigor, by adopting some regulation, or forming themselves, some rate of fees; or, otherwise, that there must have ensued among us, a *failure* of *justice*; to which, the constitution of our mother country, and that of our *province*, which is modelled after it, are utterly abhorrent. Thus the reader perceives, not only the *expediency*, but also, the *necessity of the proclamation*, at the *critical time* it issued; and marvels, without doubt, that it hath been held forth, to the publick, by *some men*, as a *measure* fraught with *evils*, which must prove *ruinous* to us all, if it be not speedily *suppressed* or *withdrawn*. "When *magistracy* "explains itself by *words*, or by *writings*, which are "the image of words; it is contrary to *gentility* as "well as to *reason*, (saith a sensible writer,) to quit "the *exterior signs* of a man's thoughts, in order to "search into his *thoughts* themselves; because, there "are none besides himself, who know his *thoughts*: it "*is much worse, when his thoughts are good, to attribute* "*to him those that are bad*." For, "that *art* of *finding* "in what has naturally *a good meaning, all the bad* "*meanings*, which a *mind accustomed to false reasoning* "*can give, is of no service to mankind*; *those who practise* "*it, resemble the ravens who shun living bodies, and fly* "*on all sides in search of carcasses*." The reader is left here to make the *application* of these passages, feasible as he must be, ere now, of the *misrepresentations* that have prevailed, in relation to the *legality*, the *motive*, the *tendency*, and *effects* of the *proclamation* among us: It now begins to be time, to think of approaching toward a *conclusion*: I confess, I have tired myself and I am fearful, that long since, I wearied the reader: however an *objection* or two to the *proclamation*, shall remain, to be slightly observed on. And the principal one, is, "that it doth establish a *tax* on the *people*." This, I deny; and my *negation*, is equal to another's *affirmation*: it is incumbent therefore, on those, who maintain the affirmative, to *adduce proof* in support of this *position*, before it be admitted: *assertion* and *proof* are two very different things: as different, as *fees* and *taxes*; and between these, I discover a striking disparity, or I am much deceived: fees, I look on, to be *compensations* made to an *officer*, in consideration of a *service* performed by him: 'tis the *render* of the *service* that doth—intitle to the *compensation*: a *reward*; a *right* then to *some compensation* or *reward*, in consequence of a *service* performed; may evidently exist, *prior* to the *rate*, or *regulation* of the *quantum* of such *compensation*, which doth constitute, what, we call the *fee*; *compensations* therefore, or fees, may originate and *subsist*, *exclusive* of any *legislative authority*, to impose or raise them, which is held *essential* to *taxation (D)*. So far then it appears, "that *fees* and *taxes* are clearly *discriminated*: *fees*, beside are incidental to *effice*: taxes, not so: *offices*, the most *ancient and constitutional*, in our province, owe their *rise*, to the *sole act* and *establishment* of the *proprietary*, or his governor here for the time being; in virtue of *powers* and *authorities* derived to them by *grant* from the *crown*, confirmed as we have seen, by act of assembly: *taxes*, the most *ancient* or *modern* that have been laid here, owe their *rise*, to the *joint act* and *establishment*, of the *three component branches* of our *legislature*, imposing them, by a *positive law*: *fees* being *incidental to*, or as, some chuse to call them, "the *perquisites*" *of office*, are *constitutionally*, and *properly*, *rateable only*, by the *same* or *like authority*, that *established* the *office*, and *appointed the officer*: but *taxes*, are *solely rateable*, by a different *authority*, whose *power* singly doth not extend to the *erection* of a *state office*: *taxes* are certain portions of property, which individuals pay into the hands of the *publick*, for the *publick's service*; *fees* are certain *rewards* which the *officer* is entitled to receive of *some* individuals, to *his own* or *another's* private *use*, for certain *services* rendered to the *party*: *fees* when *certain*, are *sueable* for, and *recoverable* by process of "indebitatus assumpsit, &c. when *uncertain*, by a "quantum meruit," brought by the *officer*: but *neither* of *these processes* will *lie* for *recovery* of *taxes*: payment of *these*, is generally *compelled*, by *distress* or *execution*, provided in the law, which gives the *tax*: these *instances*, all shew, in my weak opinion, that *fees* are not *taxes*; or *taxes fees*; properly considered; but that they are of "*different natures*" and, not as some esteem them; "as indistinct, as water is in water *(E)*;" nay, these considerations, have, I trust, shewn somewhat more; "in whom, the constitutional *right and power* of *regulating* the *fees* of office doth reside, and by whom it is to be exercised on fit and proper occasions."

It might further be remarked here, but I doubt not the reader, hath long ago, made the observation; that the *proclamation*, which regulates the *fees* of *officers* with us, hath not by its *context*, or *import*, the least *tendency* to lay a *tax* on the *people*: it leaves them just as they were before it issued, as to any "compulsory charge," or "payment to be enforced from them;" it must assuredly, then, is a very strange kind of *tax*, which *obliges* the people *to pay* "nothing" in particular to the *officer*, but "only restrains" him, from "exacting unreasonable fees "from them; and leaves him to the *recovery* of his *reasonable fee* by law against them; a *fee*, which goes, differently on recovery as hath been said, already, from a *tax*; into the officer's purse for his own private profit; and not into the publick's, for its service. Nor, doth it, in reality, strengthen the argument, generally made use of against the *proclamation*, that "if *prerogative* may "*rightfully* regulate the *fees* agreeable to the late *in*"*spection law*, it has a *right* to fix any other *quantum*; "if it has a *right* to *regulate* to *one penny*, it has a "*right* to regulate to a *million*; for where does its "*right* stop? At any *given point*." *(F)* I answer, *yes*; and let the *sound sense* of *Horace*, expressed in the following lines, confirm my assertion:

"Est modus in rebus; sunt certi denique fines,
"Quos ultrà, citràque, nequit consistere rectum."

For, though *prerogative* may *rightfully* adopt the *regulation* of *fees* under the old *inspection law*, a *regulation* formerly held just, reasonable, and equitable; a regulation established and confirmed by several successive acts of legislature; and which subsisted (I believe) among us, upwards of twenty years; nay, tho' *prerogative* may have a *right*, to fix other *quantums*, more *beneficial to the people* (as doth the *proclamation* at present, which giveth the *alternative* to the *planter*, as well as to the *farmer*); yet, it hath *not* a *right*, to establish a *rate* that must prove *grievous* to them; consequently, though it may well "have a *right* to regulate "to a penny,"—" yet, it may not have a *right* to *r*

(*A*) Shakespeare.

(*B*) See votes and proceedings, Oct. session, 1771. p. 85.

(*C*) See votes and proceedings, October sessions, 1771, page 83.

(*D*) "*Taxation* and *representation* are inseparable. "This *position* is founded on the laws of nature; it is more, it is itself an eternal law of nature; for whatever is a man's own, is absolutely his own, no man hath a right to take it from him, without his consent either expressed by himself or by his representative: whoever attempts to do it, attempts an injury; whoever does it, commits a robbery; he throws down the distinction between liberty and slavery;" and confounds the variant *essences*, or *natures*, of *fees* and *taxes*.

(*E*) Shakespeare.

(*F*) See address of the lower house in the votes proceedings, of October session, 1772.

(*W*) See votes and proceedings, Oct. 1771. p. 63. The "shadowed" part of this paragraph, ("with the "assigned reason," and "the *manner*" in which it is set forth) I frankly own is beyond my humble comprehension. It is both too *low* and too *high* for me:

"Migret in obscuras humili sermone tabernas:
"Aut dum vitat humum, nubes & inania captet."

(*X*) And if so, a question arises—"Has not the "*right* of the *officer* been *broke* in upon by the proclamation" (see votes and proceedings 1771. p. 65.)—I answer, not at all. "Voluntibus & assentientibus non "*fit injuria*," is a maxim of the law.

(*Y*) See votes and proceedings 1771. p. 20.

(*Z*) See votes and proceedings 1770. p. 270.

"gulate to a million;" for the reader will be pleased to remember, that I have proved, or at least "attempted" to prove before, from Mr. *Locke*, and the best *authorities* in the *law books*, that *prerogative*, (and *proclamation* which is a branch of it) were centered by the wisdom of the constitution, in the "*governing* "*power*" of the state; not for the *injury*, but for the *good* of the *people*: not for the *disadvantage*, but for the *advantage of the community*: now, unless the following absurdity can, or will be maintained; viz. that the *service* of an *officer*, which is properly *rateable* at a "*penny*," ought *consistently* with *prerogative* (which is a "*discretionary power* to act for the *people's good*") to be set or laid at a "million," and that the *party* to whom such *service* is *rendered*, can as well bear, and as easily discharge (without *injury* to his *private interest*) the *greater*, as the *lesser rate*; I think, the above *argument*, or rather, the "*shew*" of one, must, as it ought, fall to the ground, or vanish. Nor need the *people* any longer be under *apprehension*, (suggested by *only men*, who feel none of them their leaves) that if the *proclamation* continues, "Whether, their own money shall "remain in their pockets, or not, depends no longer "on them, but on the *prerogative* (G);"—"That "there is *nothing* (in such case) they can call their "own (H);" and this to confirmed to them, by "the "*words* of a *light and ornament* of the present age (I);" *Qualities of substance*, that I never heard before were endued with the organs of speech!

And, thus much may suffice, in relation to the above *objection*. There are *others*, and among them, one, of a more general nature, and indeed, of more general extent, being frequent in the mouths of many men, against the *exertion* of this *act* of *prerogative*: and it is this, "That *proclamations* are of *bad precedent* and *dangerous tendency* in a *free state*, and therefore ought never to be *countenanced*."

Arguments from the *abuse*, to the *disuse*, or *non-user* of a *measure* are vicious: they commonly prove too much, which is as bad, in logicks, as proving too little: Thus, a man ought not to be allowed the use of knife and fork at his meals, least he stick some, and cut others, with them. Nay, those men who make use of these arguments, should not be privileged to retain their *teeth*, to chew their victuals with, least they should, at some time or other, employ them to the purpose of *biting* mankind. Physick, properly applied, contributes to health; improperly, to death: shall it therefore be banished *the community*? A sword, in a prudent man's hand, is a weapon of safety and defence: in a mad-man's hand, an instrument, probably of destruction: Is it then to be disallowed, and disused, because it may be *employed* to a *bad*, as well as to a *good purpose*? That doctrine would be strange indeed! And yet, no less strange is it, to object to, reprobate, and condemn, the *exercise* of a *right*, *constitutionally* given, for the good of the *people*, and which, in the particular instance, under consideration, hath been productive of that very *effect*; merely, because it *may have been*, and, *again may be perverted* from its true and proper end and *purpose*; and thoughtlessly or designedly be *abused* by *unwise* or *impolitic magistrates*, to the *detriment of the publick*. One might suspect, from the *levity*, or rather frivolity of such *objections*, as these, to the *proclamation* (and I could mention many more, I have heard, of the like kind; but that I am apprehensive, the reader might think me fond of raising *straw images*, purely for the pleasure of pulling them to pieces again); that *those* who *use* them, really mean to give up the cause they affect to support. It is scarce to be credited, that in these days, which we boast of as enlightened, the *people* could suffer themselves, by the insinuating harangues of a few designing and selfish men, and the loud clamour of their followers, to be so far imposed upon, as to *doubt the propriety of the exercise of a right*, from whence they have received such signal benefits; and from whence they daily derive *advantages*, without the experience of any *disadvantages*, that I am apprized of (K). If there are *any*, let them be made appear to the publick: till then, I guess, they will wisely judge of the *tree* by *its fruits*, and not by the *reports* of others concerning it;—and if, on dispassionate, impartial, and mature consideration, had of the *nature* and *tendency* of this *proclamation*, the *publick* should be inclined to view it in that *constitutional*, *legal*, and *beneficial* light, it doth appear to me, on those grounds and reasons of law, I have assigned in support of my opinion in its favour; What will they think? What will they say? or rather, What will they not say?—of *some men* among us, who have exerted every nerve, employed every faculty of their soul, and made use of every argument and artifice they are capable of, to blind or mislead the understandings, and irritate and inflame the minds of the *people*; and who "industriously augment the difficulties of *administration*, by "obliging it to pay that *attention* to their *interested opposition*, which might be better employed," in composing *differences*, in healing *party divisions*, and restoring *harmony* and *union* among us; in conciliating a *friendly correspondence*, and cultivating a *good and permanent understanding*, between the *constituent members* of the *legislature*; and thereby paving the way to the *procurement* of wise and *salutary laws*, regulating the *fees of the officers*, and the *allowance* of the *clergy*; and making *generous* and *genteel provision* for each, suitable to their *respective ranks* and *stations*; and by such *conduct*, *superseding* the *reason*, the *expediency*, the *necessity*, of the *proclamation*'s existing any longer among us (if still dreaded, when no danger threatens); and thus cutting up, at one great and master *stroke*, all grounds of *envil*, *political contest*, and *distraction* in the *community*, which have too long prevailed, contrary to the fervent wish and silent prayer of every honest and well-meaning man—"*Ne quid detrimenti capiat respublica.*"

I am, with *due gratitude* for all past *favours* conferred by the *publick*,

their most obliged and humble servant,

JOHN HAMMOND.

(G) See votes and proceedings, Oct. session, 1771. p. 66.

(H) Ibid.

(I) Ibid.

(K) Although we are told, "in the words of a *light* and *ornament* of the present age, that, if this *unconstitutional assumption of power*," should prevail among us, "there is *nothing* we can call our *own*;"—"our *money* may no longer remain in our own pockets, &c." yet I am happy in congratulating the *publick*, that this *horrible prophecy* is not yet come to pass, notwithstanding the *proclamation* hath subsisted among us almost *three years*: it hath taken no more from me, than I used to pay under the *old inspection laws*; nor indeed "*so much*" I should be glad to know, how any *individual* in the *community* (and it is of *individuals* that the *publick* is composed) hath been a *greater loser* by it than I have *declared myself* to be: and yet, I have "as "much in my pocket" as I formerly had, and still am possessed of "*something*" I can call my own.

LONDON, *May* 20.

THE ministry are now at a stand about what measures to take at this alarming crisis: they are unwilling to engage any more men, as also to turn off any men. They are quite in a state of uncertainty both at Portsmouth and Plymouth, and know not which to prepare for, war or peace.

May 25. Several Spanish men of war, with a number of transports, sailed last month, from different ports in Spain, for the coast of Guinea, in order to join the French squadron already there; after which junction, it is said, some important blow is intended to be struck.

By a Dutch ship just arrived from the East Indies we have an authentic account, that the French are making very great hostile preparations, and that the islands of Mauritius and Bourbon have been new garrisoned from Europe.

By a vessel from the Mediterranean, which touched at Barcelona in her way home, we have advice, that several merchant ships are detained in that port, by impressing of their hands to serve on board the Spanish men of war fitting out there.

ANNAPOLIS, JULY 29.

We hear from Frederick county, that about ten days ago one Mossman of Baltimore Town purchased a parcel of convicts, in order to dispose of them again to advantage; all of which he sold before he reached Frederick-Town except four men, with whom he was proceeding towards Hager's-Town; but about two or three miles on the other side of Frederick Town, one of the servants told his master that he was too much fatigued to go any further; they therefore all rested themselves on an old tree by the side of the main road. After some time, Mossman told them they must proceed on their journey, but they refused and immediately threw him backwards over the tree, dragged him about five steps into the woods, and then cut his throat from ear to ear; took his pocket book and then went over the mountain, calling at every tavern on the road. They were met by a man, who had seen their master on his way up with them; and enquired of them concerning him; they said he was a little behind refreshing himself; but after riding several miles without hearing of him, concluded he had been murdered by them. He accordingly alarmed the neighbourhood, they were pursued, taken, and are now in jail at Frederick-Town, having signed a confession of their guilt before a magistrate.

*** A. B. *will have a place in our next.*

Advertisements omitted will be inserted next week.

Queen-Anne's county, July 23, 1773.

WHEREAS one of my creditors, through ungenerous——misapprehension, or wrong judgment on my probity, did, in the course of the last year, attach on my estate, and cause all other of my creditors to do the same, while I was absent on a voyage to the West-Indies and south provinces of this continent, by which I am a great sufferer, my wife's estate having been snatched away from us in a most cruel manner, and our negroes taken away from our plantation at an under value; these are to inform those persons who have any of them in their possession, that being arrived, even without having been informed of what happened to my disadvantage with regard to my estate in this province, I expect of their generosities to return me the said negroes, offering to pay them all claims they may justly have against me, on theirs, or other accounts; therefore as the said negroes have been taken away to different parts of the province, I hope none of them shall be disposed of but in my favour.

May the author of my griefs never experience the same, but have sensibility enough in his heart to feel the dagger he thrust into mine.

w4 C. T. WEDERSTRANDT.

JUST IMPORTED,

In the Caroline, Capt. Lynch, from London, and to be sold, by the subscribers, at their store on the dock, in Annapolis, on very reasonable terms, for cash or short credit,

A CHOICE and general assortment of European and East-India Goods.

WALLACE DAVIDSON and JOHNSON.

July 19, 1773.

To be sold, at publick vendue, on the third day of August next, at the plantation of Mr. William Iliams, that now is advertised for sale on the same day,

A TRACT of land called Duvall's Range, containing upwards of four hundred acres; it lies on Patuxent river, adjoining Mr. Iliams's plantation. On the said land are four tenements. The soil is good, well watered and timbered. For title and terms apply to the subscriber living in Prince-George's county.

HOWARD DUVALL.

To be sold cheap for cash, by the subscriber, wholesale and retail,

VERY good spirit and West-India rum, continent ditto, molasses, genuine Mallaga wine, loaf sugar of several sorts, a large quantity of best Muscovado ditto, bohea and souchong tea, nutmegs, allspice, pepper and ginger, mustard, chocolate and coffee, soap, tallow and spermaceti candles, powder and shot, window glass of several sizes, and a few choice saltpetre'd Burlington gammons. Also sweet oil, Stoughton's bitters, Bateman's drops and British oil, sugar cakes for destroying worms in children, Anderson's pills, cream of tartar, Epsom salts, rhubarb and manna, &c. &c.

3w WILLIAM WILKINS.

July 21, 1773.

WENT away, last night, from Thomas Snowden's plantation, the six following servant men, viz. William Lowe, an Englishman, about 20 years of age, about 5 feet 8 or 9 inches high, by trade a blacksmith, of a swarthy complexion, and has lost one of his fore teeth; had on, an osnabrig shirt, dirty brown holland trousers, old castor hat, old shoes, and plated buckles. Richard Ellingsworth, born in Yorkshire, about 25 years of age, 5 feet 8 or 9 inches high, of a dark complexion, and pretty well set; had on, an osnabrig shirt, crocus trousers, old flowered lapelled waistcoat, old felt hat, and good shoes. Richard Thompson, born in the north of England, about 27 years of age, about 5 feet 5 or 6 inches high, of a swarthy complexion, and is much pitted with the small-pox; had on, an osnabrig shirt, crocus trousers, old felt hat, and good shoes with copper buckles. Thomas Hogg, born in Yorkshire, about 25 years of age, about 5 feet 6 or 7 inches high, and of a swarthy complexion; had on, an osnabrig shirt, black breeches and stockings, an half worn castor hat, and old shoes with copper buckles. Thomas Sutton, a north countryman, about 25 years of age, about 5 feet 8 or 9 inches high, and of a fair complexion; had on, an osnabrig shirt, canvas trousers, old castor hat, and good shoes with plated buckles. John Driver, an Englishman, born in Norfolk, about 23 years of age, about 5 feet 5 or 6 inches high, and of a dark complexion; had on, an osnabrig shirt, crocus trousers, old castor hat, old shoes and copper buckles. Whoever takes up the said servants, shall receive, on securing them in any jail, so that their masters get them again, if taken 20 miles from home, 30 shillings for each, and so in proportion for a greater distance, and, if brought home, reasonable travelling charges, paid by

HENRY and THOMAS SNOWDEN.

LOST, from the brig Betsey, the 23d inst. July, between Poplar and Kent islands, a moses built long-boat; she is a new boat, painted yellow and blue, has a graven piece in her stern post, and had eight dolphins tails tacked to her stern. The subscriber will give any person forty shillings that will deliver her at Baltimore-Town.

w2 RICHARD DAVIES.

Baltimore, July 17, 1773.

JUST IMPORTED,

And to be sold by the subscriber, on reasonable terms,

DRUGS and medicines, apothecary shop furniture, surgeons instruments, urinals, nipple glasses, and every article in common use among the medical and chirurgical gentlemen. Also painters colours, oils, and utensils, gold leaf, varnish, &c

w5 ALEXANDER STENHOUSE.

COMMITTED to the jail of Charles county as a runaway, a negro man who calls himself Frank, and says he is the property of William Jetty, of Mecklinburg county in Virginia; he is about five feet five inches high, a likely well made young fellow, his face much scarified, particularly his forehead, occasioned, as he says, by his being burnt when a child: Has on and with him, a good osnabrig shirt, a pair of old died jeans breeches, old shoes and stockings, a felt hat almost new, and a woman's osnabrig petticoat, which he says he took from his sweet-heart by way of a love memorandum. His master is desired to take him away and pay charges, to

1w Wm. HANSON, depy. sheriff.

THERE is at the plantation of Richard Scarge, on Bennet's creek, in Frederick county, taken up as a stray, a small bay mare, about 7 years old, 13 hands high, branded on the near buttock with a fork, is a natural pacer. The owner may have her again, proving property and paying charges.

Anne-Arundel county, July 20, 1773.

To be sold at publick vendue, at the late dwelling-house of William Reid, deceased, near Queen-Anne, on the first Day of September next,

A PARCEL of stock, and household furniture, consisting of cattle, horses, hogs, feather-beds, &c. by

3w ELEANOR REID, Executrix.

To be sold, the first Wednesday in August next, at the House of Mrs. Chilton, in Baltimore-town, by way of publick vendue,

THE four following LOTS of GROUND, viz.

No. 52. In Baltimore-town, opposite to Mr. Jonathan Plowman's present dwelling; a corner lot, 95 feet by 100, on which are improvements that have for some years past been let at £. 50 per annum. A fee simple.

No. 71. On Fell's point, a water lot, 60 feet front, on George-street, nearly opposite the market-square, from which lot is a good wharf, extended into the water so far that ships, &c. may lade or unlade thereat. A fee simple.

No. 99, & 100. On Fell's point, water lots, each fronting on Wolf-street, 60 feet, adjoining James Morgan's ship-yard. These lots are deep, and the water opposite to them as bold as any where about the point, not more than 150 feet from the shore, on one of which, i. e. 99, is a new brick-house, 26 feet by 16. Each subject to a ground rent of £. 3:5 sterling per annum.

Also, a commodious situation for a gentlemans seat adjoining Baltimore-town, containing 400 acres of ground, is by far the highest situation near the town, from which is an agreeable prospect of Baltimore-town, Fell's point, Patapsco river, Chesapeak bay, and the country adjacent. This seat will be accommodated with a few acres of flat land, suitable for meadow, if wanted by the purchaser. Attendance will be given the preceding day to shew the title, paper, and premises, by

2w JOHN DEAVER.

N. B. Also to be sold in fee, or let on a reasonable ground rent for 99 years renewable for ever, upwards of 100 lots, in the new addition to Baltimore-town, by J. D.

TO BE SOLD, BY THE SUBSCRIBER,

THREE hundred acres of patent land, and about thirty acres leased land for ninety-nine years, all joined together, lying in Baltimore county, about ten miles from Bush-Town, on the main road that goes from Bush to York-Town, Pennsylvania, about twelve miles from Joppa, and about eighteen from Baltimore-Town; the land is good, and will suit either for farming, or planting tobacco; it is likewise well situated for a tavern or store, as it lies on the main road that all the waggons from the upper mills go to Baltimore-Town, and joins the land of Mr. Abraham Whitaker, where he now lives, who is building and letting lots to several people for keeping taverns and stores; it is well adapted for such business, as it lies in the heart of a settlement where there are large quantities of wheat made, and many merchant mills convenient; there are on the land two small plantations; on one of them a small dwelling house in middling good repair, a good barn, and a large apple orchard of good fruit, and bears well; on the other place there is a middling good large dwelling house in pretty good repair, and other convenient houses, and a small apple orchard of good fruit; there likewise may be made meadow enough to support the place with hay, without much trouble. Any person or persons inclinable to purchase, may see the above land by applying to Mr. Abraham Whitaker, or the subscriber.——Likewise to be sold, a large two story brick dwelling house in the town of Joppa, on a water lot, the house is almost new, has four rooms on a floor, and eight fire places, cellars under the whole, and a neat store made of one of the rooms, which is quite private from the other part of the house, and now rented to Walter Tolley, jun. Esq; Any person inclinable to purchase the aforesaid house and lot, may know the terms by applying to the subscriber living in the fork of Gunpowder, near Joppa. The title of the whole indisputable.

JOHN HAMOND DORSEY.

Elk-Ridge, July 8, 1773.

I DO hereby desire, that no person or persons whatsoever, will take an assignment, or give any value for a note of mine given to a certain Nathan Dorsey, on the 17th day of December, 1771, for 37 pounds sterling; as the said note was given for a negro that was mortgaged to William Hall of Elk-Ridge, I am determined not to pay said note, unless compelled thereto by law.

w2 JOSHUA BROWN, senr.

Cæcil county, July 16, 1773.

STOLEN from along side of the brig Harriot, lying at Fell's point, Baltimore-town, a yawl, about 15 feet long, her stern lately broke, and some time since she was paid with turpentine, a piece of sheet lead on her bow. Whoever takes up the said boat, and delivers her to Capt. Thomas Elliot, on Fell's point, or at my house near Frederick-town, in Cæcil county, shall have a reward of forty shillings, paid by

3w ROBERT CRAIG.

ANY Person wanting Searches made in the Rentals for the Western Shore of this Province may apply to

J. CLAPHAM.

Annapolis, July 19, 1773.

The subscriber has for sale at his house, the next door above Samuel Chase, Esq;

A SMALL parcel of saddlery, consisting of narrow diaper, and straining webs, fringes of all colours, broad and narrow orrice, steel head-stall and throat buckles, common stirrup irons, plain and silvered staples and plates, also plain and silvered tuft nails, a few thousands of 3d. 2d. and clout tacks; leather bags, double and single girths lined and unlined, bridles, stirrup leathers, cruppers, &c. He likewise makes and repairs ladies and gentlemens hunting and common saddles, &c. Those ladies and gentlemen that please to favour him with their custom, may depend on having their work done in the best and neatest manner, and at the most reasonable rates,

By their humble servant,

tf WILLIAM JACOB.

July 17, 1773.

A CONSIDERABLE quantity of port wine of the first quality, London old bottled porter, ale, Glouceſter and Cheshire cheese, single refined and lump sugars; imported in the Sim, Capt. Boucher, from London, and Lady Margaret, Capt. Noble, from Glasgow; to be sold for cash, or on short credit, by the subscribers in Alexandria, Virginia.

4w BENNETT BROWNE, & Co.

July 5, 1773.

RAN away from the subscriber, living in Westmoreland county, Virginia, two white men servants, viz. William Walker, alias Smith, a convict, who came in, in 1771, in the Scarsdale, Capt. Reid, by trade a gardener; he is a slim made man, five feet nine or ten inches high, brown complexion, blue eyes, blackish hair, has a remarkable swing in his walk, a coarse voice and a cough; he had with him, kersey and cotton jackets and breeches, white, check, and osnabrig shirts; he likes drink, and has been severely whipped before a magistrate: this is the third time he has run away; as he had sailors cloaths with him he will attempt to pass for a sailor. Thomas Puttrell, an indented servant, (who came in last April, in the Liberty, Capt. Raison) a trunchy well made man, fair complexion, brown hair, which curls in his neck, a round face, hazle eyes, speaks quick, a butcher by trade; understands gardening and farming; he has been fourteen months on board a man of war; he has a butcher's steel and knife, and wears quils in his hat: he had with him, a brown cloth coat, second mourning jacket, black breeches, white, check, and osnabrig shirts, and some money; he will attempt to pass for a sailor; and I hear they intend to Baltimore and Philadelphia. Whoever apprehend the aforesaid servants, and secures them in a jail, so that I get them, shall receive a reward of five pounds Virginia currency for each of them.

tf RICHARD LEE.

THERE is at the plantation of William Randal, in Baltimore county, Garrison-Forrest, taken up as a stray, a gray mare, with a small bell on, and has a long switch tail, and is 13 and a half hands high, shod all fours, trots and gallops, and appears to be 9 or 10 years old, branded on the near shoulder thus O, and on the near Buttock S.

The owner may have her again, on proving property and paying charges.

By the lower house of assembly, July 2, 1773.

ORDERED, THAT the following be entered as the resolves of this house, viz.

RESOLVED UNANIMOUSLY, That the representatives of the freemen of this province, have the sole right, with the assent of the other part of the legislature, to impose and establish *taxes* or *fees* and that the imposing, establishing or collecting any *taxes* or *fees* on or from the inhabitants of this province, under colour or pretence of any *proclamation* issued by, or in the name of the Lord Proprietary, or other authority, is *arbitrary, unconstitutional*, and *oppressive*,

RESOLVED UNANIMOUSLY, That in all cases, where no fees are established by law for services done by officers, the power of ascertaining the quantum of the reward, for such services, is constitutionally in a jury upon the action of the party.

RESOLVED UNANIMOUSLY, That the *proclamation* issued in the name of his Excellency Robert Eden, the Governor, with the advice of his Lordship's council of state, on the 26th day of November, 1770, was *illegal, arbitrary, unconstitutional*, and *oppressive*.

RESOLVED UNANIMOUSLY, That the paper writing, under the great seal of this province, issued in the name of the late Lord Proprietary, on the 24th day of November, 1770, for the ascertaining the fees and perquisites to be received by the registers of the land-office, was *illegal, arbitrary, unconstitutional*, and *oppressive*.

RESOLVED UNANIMOUSLY, That the ADVISERS of of the said proclamations were enemies to the peace, welfare, and happiness of this province, and the laws and constitution thereof.

ORDERED, *That the said resolves be printed in the next week's Maryland gazette, and be continued therein, six weeks successively.*

Signed by order,

JOHN DUCKETT, Cl. Lo. Ho.

ALL persons indebted to the estate of the late Lord Baltimore (except for land sold by the commissioners) are desired to make immediate payment to Daniel of St. Thomas Jenifer, Esq; who is empowered to receive the same; those who neglect to comply with this requisition, may depend that suits will be commenced against them without respect to persons.

8w ROBERT EDEN, Executor.

Anne Arundel county, July 12, 1773.

On the third day of August next, will be sold on the premises, at publick vendue,

ONE hundred acres of land, whereon the subscriber formerly lived, on which are two tenements, one of them being well improved, having a dwelling-house 20 feet by 16, under which is a cellar walled with stone, kitchen, quarter, tobacco-house, and other necessary buildings; there are two valuable apple orchards on said land, with other fruit trees. The land is situated within a small distance of several valuable water-mills. The soil is good; on which is some meadow ground partly cleared, well watered, and timber enough to support the land with care. For title and terms apply to

w3 WILLIAM HAMS, son of George.

July 7, 1773.

To be sold by the subscriber at publick vendue, on Tuesday the 10th day of August next, on the premises, if fair, if not the next fair day,

ABOUT two hundred acres of land, being part of that tract of land called Davis's Purchase, lying in the fork of Patuxent, about 16 miles from Elk-Ridge Landing, and about 6 miles from Snowdons iron-works; there is on the premises an exceeding good apple and peach orchard; the land is suitable either for planting or farming; the purchaser will be put into possession the 25th of December next, and have the liberty to sow grain this summer. STEPHEN STEWARD.

Annapolis, June 29, 1773.

AS the subscriber, master of the French tongue, has met with good encouragement in this city: he giveth notice to the publick, that he purposes to teach the French and English grammar, for the term of 2 years from this date; his school shall be kept in the most convenient place in this city, where shall be taught, reading, writing, and arithmetick, in both languages, with the utmost care and assiduity, by their humble servant

4w JOSEPH PAILLOTTET.

N. B. He also attends ladies and gentlemen at their particular abodes.

Frederick county, June 7, 1773.

To be sold for sterling cash, London bills of exchange, or current money,

THE plantation where the subscriber now dwells, situated and lying in the said county, on Linganore, containing 600 acres of land; there are on said plantation two good dwelling-houses, corn-house, stables, meat-house, two good tobacco-houses, a good apple and cherry orchard, between 30 and 40 acres of meadow under good fence, part of the said sown down in timothy, and with little expence the other part may be made in as good order; there are also on the said land, 30 or 40 acres of meadow, which has not been cleared or fenced in; the land well adapted for farming or planting, and as fine range for stock as any in the province. The title indisputable. Also, a lot of land at Elk-Ridge Landing, in Anne-Arundel county, within eight miles of Baltimore-town, with a good store-house and counting-room, 30 feet by 18, a good granery, 34 by 20, and a stable. The lot lies very convenient for trade. The improvements all new. Any person or persons inclinable to purchase the said land, may view the premises at any time by applying to the subscriber, and may be put in possession of the said land, by the 20th Sept. next. They may also view the lot and improvements, by applying to Mr. Joshua Dorsey, at Elk-Ridge Landing.

w4 BENJAMIN DORSEY.

Gunpowder mill, July 5, 1773.

RAN away last night from my mill, on the great falls of Gunpowder, in Baltimore county, Maryland, two Irish indented servant men, viz. William Stackabout, about 50 years of age, and about 5 feet 10 inches high; had on, and took with him, an old blue coat, black jacket and breeches, two pair of osnabrig trousers, one check shirt, one osnabrig ditto, an old brown cut wig, a new felt hat, a pair of yarn stockings, and one pair of old patched shoes. Cornelius Shane, about 23 or 24 years old, and about 5 feet 6 Inches high: had on, and took with him, a suit of brown coarse cloth, one check shirt, one osnabrig ditto, one pair of osnabrig trousers, one pair of blue yarn stockings, one pair of old shoes, with yellow metal buckles, a brown dress wig, one old castor hat, one cooper's broad-axe, with the helve drooping; and an old drawing knife; they are both coopers by trade. Whoever takes up the said servants, so as the subscriber may have them again, shall receive, if taken 10 miles from home, three pounds; if 20 miles, four pounds; and if out of the province, six pounds; and if only one, the above reward in proportion, with reasonable charges, if brought home, paid by

4w BENJAMIN ROGERS.

N. B. Stackabout is a thin faced man; the other is a round faced man, pitted with the small pox a little; they both talk much in the Irish dialect.

Annapolis, May 20, 1773.

THE subscriber intending to leave this province the ensuing fall, earnestly requests all persons indebted to him to make speedy payments; and all those who have demands against him, are desired to make them known, that they may be adjusted.

JOHN HEPBURN.

SCHEME of a LOTTERY,

for raiſing 1350 Dollars, for repairing the Road from *Connelloway* to *The winding Ridge*

Number of Prizes.		Dollars.			Dollars.
1	of	300	is		300
3	of	100	are		300
6	of	50	are		300
51	of	20	are		300
30	of	10	are		300
60	of	5	are		300
75	of	4	are		300
850	of	3	are		2550
1040 Prizes			are		4650
1960 Blanks			gain		1350
3000 Tickets at Two Dollars each amount to					6000

BY the above Scheme there are not Two Blanks to a Prize, and the Prizes ſubject to no Deduction; and as there are many of them very valuable, it is not doubted but the Tickets will very ſoon be diſpoſed of, eſpecially as a great Number of them are already engaged.

The Drawing to begin at *Hagar's-Town*, on Tueſday the Third Day of *Auguſt* next if full, or ſooner if ſooner full, in the Preſence of Three Managers at leaſt, and as many of the Adventurers as chooſe to attend.

The Managers are, Meſſ. *Thomas Criſſop, Michael Criſſop, James Wood, Jonathan Hagar, John Swan, James Caldwell, John Caldwell,* and *Richard Yeates.*

A liſt of Prizes will be publiſhed in the *Maryland* Gazette, which will be ready to be paid in One Month after the Drawing. Thoſe not demanded within Six Months will be deemed as generouſly given towards repairing the aforeſaid Road.

Tickets may be had of any of the Managers.

July 7, 1773.

WILLIAM AIKMAN,

Bookſeller and ſtationer in Weſt-ſtreet Annapolis,

ON Monday laſt opened his circulating library conſiſting of above 12 hundred volumes on the moſt uſeful ſciences, hiſtory, poetry, agriculture, voyages, travels, miſcellanies, plays, with all the moſt approved of novels, magazines and other books of entertainment, to be lent out to read at one guinea per year, 20 ſhillings for ſix months, 12 ſhillings per quarter, 5 ſhillings per month, or 3 pence per night. Readers at any diſtance from Annapolis to be allowed two books at a time. As the library will be of real utility to the publick, and as the proprietor will take care to have it ſupplied with all the new publications of merit from Britain ſo ſoon as publiſhed, he hopes it will meet with encouragement from the friends of literature.

He has likewiſe imported a large aſſortment of moſt of the books in the library for ſale. The beſt editions printed on a fine paper, handſome type and neatly bound. All different kinds of gilt and plain, cut and uncut writing paper, gilt, plain and engraved meſſage cards, turky pocket books and letter caſes, folio and quarto paper books, ruled and unruled, memorandum books of all different ſizes, wax, wafers, pens, penknives, pencils, ivory folders and all different kinds of ſtationary, with an aſſortment of jewellery, to be ſold at the London prices for caſh only.

Paper ruled and bound for accounts, all kinds of books bound and re-bound in the neateſt manner and at the moſt reaſonble rates, by

WILLIAM AIKMAN.

N. B. Catalogues both of the library and the books he has for ſale to be had at his ſhop.

Virginia, April 29, 1773.

To be rented, for a term of years,

THE mills at the falls of James river, in the town of Manchester, which conſiſt of a double ſawmill, a griſtmill, with two pair of ſtones, for country work, which is worth about 400 barrels of corn the year, a merchantmill with four pair of beſt French burſtones, and all conveniencies neceſſary for carrying on the manufacturing buſineſs in the beſt manner; likewiſe a good dwelling-houſe with two rooms on a floor, and a cellar and large fireplace in it; as alſo a large ſtore-houſe, cooper's ſhop, ſtable, blackſmith's ſhop and tools, and a lot of two acres and a half encloſed about the works. The ſtream affords water enough for as many more mills, and the works are ſo ſituated that they are out of danger from freſhes, having never received any damage but from the unparallelled one in May 1771. Theſe works, being placed within a few yards of navigation, and in the moſt flouriſhing part of the country, where any quantity of wheat may be purchaſed, the buſineſs of manufacturing, as well as the Weſt India trade, may be carried on to as great advantage as any where on the continent, and a ready market may be had for any quantity of plank, ſcantling, &c. The ſaw and griſtmills are now finiſhed, and the merchantmill will be finiſhed by the 1ſt of September next. Any perſon inclinable to rent the ſaid works, may know the terms by applying to

6w JOHN MAYO.

Elk-Ridge Landing, June 5, 1773.

To be ſold at publick auction the firſt Saturday in Auguſt, if fair, if not, the firſt fair Saturday after, for ſterling caſh, good London bills of exchange, or current money,

THE houſe and lot where Joſhua Dorſey now lives. There are on the lot, a good dwelling-houſe, 48 feet by 28, 2 ſtory high, with an addition to one end, 16 by 28, 5 rooms on a floor, with a paſſage through; the houſe quite new, a good cellar under it, 28 by 28, a good kitchen with a brick chimney, and a covered paſſage from the dwelling-houſe to the kitchen, 24 by 10, a good ſmoke-houſe and ſtable, oven and oven-houſe, a good garden well paled, and the poſts all locuſt and cedar, a good well with a pump in it; the whole improvements new and in good order; an excellent place for a publick-houſe, and well calculated either for publick or private life. There is one acre and one quarter of ground to the lot, which is under a rent of three guineas per year for ninety nine years, and renewable for ever, by

tf JOSHUA DORSEY.

N. B. Will be rented after the day propoſed for ſale, if not ſold: alſo a billiard table to be ſold.

CHARLES JACOB and ABRAHAM CLAUDE,

WATCHMAKERS FROM LONDON,

Have juſt opened hop, oppoſite Mr. Ghiſelin's, *in* Weſt-ſtreet, Annapolis,

WHERE they repair all Sorts of repeating, horizontal, and plain Watches, in the neateſt and moſt approved Manner, and at the moſt reaſonable Rates. Thoſe Ladies and Gentlemen that pleaſe to favour them with their Cuſtom, may depend on having their Work done with the greateſt Punctuality and Exactneſs, as they will execute all the Work themſelves without employing any other Perſon, and engage their Work for one Year: They will alſo ſupply any Perſon with Watches of their own make, and warrant them as good as if bought in *London*.

May 20, 1773.

In purſuance of a deed executed on the 18th day of May, 1773, by Meſſrs. John Barnes and Thomas How Ridgate, joint partners in trade, to us the ſubſcribers, in truſt for the payment of their debts in the manner in the ſaid deed expreſſed, which deed is recorded among the records of Charles county,

NOTICE is hereby given to the country creditors of the ſaid John Barnes and Thomas How Ridgate, and the holders of bonds and other ſpecialties, and bills of exchange, actually and bona fide executed and drawn by the ſaid John Barnes and Thomas How Ridgate, in the province of Maryland, that we have appointed the twenty firſt day of February next, to meet the ſaid creditors in the town of Port-Tobacco in Charles county, in the ſaid province of Maryland, for the purpoſe of receiving their claims in writing againſt the ſaid John Barnes and Thomas How Ridgate, joint partners in trade as aforeſaid, and releaſes of the perſons of the ſaid John Barnes and Thomas How Ridgate. And that all thoſe of the ſaid creditors, who ſhall neglect or refuſe to ſignify their claims in writing to us or one of us, or who ſhall neglect or refuſe to releaſe and acquit the perſons of the ſaid John Barnes and Thomas How Ridgate, in conſideration of the benefits and advantages the ſaid creditors are to receive under the ſaid deed, on or before the ſaid twenty-firſt day of February next, will be barred and excluded from all manner of benefit and advantage under the ſaid truſt deed, and the powers therein contained, according to the purport true intent and meaning thereof.

JOHN ROGERS,
THOMAS STONE,
PHILIP RICHARD FENDALL.

THE ſubſcriber having declined the buſineſs of ſtore keeping for ſome time, begs leave to requeſt all perſons that have dealings with him to ſettle their accounts without loſs of time, otherwiſe he will be obliged to take ſuch ſteps as the law directs.

He has ſtill on hand about £. 300 ſterling coſt of goods, which he will ſell upon reaſonable terms, and may be ſeen at Mr. Aikman's ſtore, next door to Mr. Joſhua Frazier's. Alſo a neat phaeton with compleat harneſs.

3w COLIN CAMPBELL.

N. B. Attendance will be given at Mr. Frazier's.

Bladenſburg June 14, 1773.

LAND to be ſold by publick ſale, on the Wedneſday of November court next, at 2 o'clock, before the houſe wherein Mrs. Charleton now dwells at Frederick-town, viz.

A valuable well improved tract of 310 acres, now occupied by William Hilliary, about ſeven miles below the ſaid town, which was conveyed by ſaid Hilliary to me by a deed which is recorded in Frederick county land record book, I, folio 1044, February 18, 1765.

The bidder who ſhall pay down the greateſt ſum of money on the day aforeſaid, ſhall have a conveyance of the right now veſted in

RICHARD HENDERSON.

South-river, July 14, 1773.

To be ſold, by the Subſcribers, agreeable to the laſt will and teſtament of Joſeph Brewer, deceaſed, on Tueſday the 24th of Auguſt next, on the premiſes, if fair, if not, the next fair day,

ABOUT 150 acres of land, more or leſs, lying in Anne-Arundel county, ſituated on South-river, near London-town. The ſoil is good; on it is a dwelling-houſe and kitchen, with a brick chimney, corn-houſe, barn, ſtable, and ſeveral other convenient houſes. For terms apply to

JOSEPH BREWER, } Executors of Joſeph Brewer,
SAMUEL GEIST, } deceaſed. w5

William Whetcroft, goldſmith and jeweller, at his ſhop in Weſt-ſtreet, has for ſale,

A LARGE quantity of ſilver work ready made, ſuch as ſilver coffee-pots, tea pots, waiters, tankards, quart, pint, and half pint cans, ſugar-diſhes and baſkets, cream-pots and cows, butter-boats chaſed and plain, pepper caſtors, ſalts chaſed and plain, ſoup-ladles and ſpoons, table, deſert, marrow, and tea-ſpoons, ſugar-tongs, joint and ſpring ſilver ſpurs, plated ditto, whiſtles, punch ladles and ſtrainers, morocco pocket-books, ſilver pencils, nutmeg-graters, with a great variety of new faſhion ſilver ſhoe-buckles, ſet ſhoe, knee, and ſtock-buckles, paſte, marquiſite, and garnet combs, hair flowers of all ſorts, and beautiful paſte necklaces with ear-rings to match them in caſes; new faſhion ſtay hooks, ſettings for miniature pictures and bracelets ſet round with garnets, diamond, topaz, garnet, amethyſt, cornelian, and hoop-rings; box lockets ſet round with garnets, ſilver ditto ſet round with marquiſites, with plain gold ones of different prices; gold and ſilver thimbles, ear-rings of different kinds, garnet broaches ſet in gold and ſilver, plain gold ditto, cornelian ſeals ſet in gold, with a great variety of others ſet in ſilver and pinchbeck, ſet pins of all ſorts, mocoa ſleeve-buttons ſet in gold, white and brown chriſtals in ditto, with almoſt every kind of locket buttons, all which he will ſell on very reaſonable terms; and as he has the greateſt part of them manufactured at his own ſhop, and can depend on the goodneſs of the work, he will engage if any perſon ſhould buy any jewelling work from him, and that any of the ſtones ſhould happen to drop out, that he will reſet it gratis: he likewiſe carries on the clock and watch making buſineſs as uſual, and has for ſale ſome extreme good, eight day and twenty-four hour clocks, with a great variety of watches of different prices, both in gold, ſilver, and fiſhſkin caſes, which he will engage are as good as can be imported for the ſame price, and for the encouragement of ſuch gentlemen and ladies, as may pleaſe to deal with him, he will engage any watches he ſells with his own name, that he will keep them in repair for three ſhillings and ſix-pence yearly, provided they don't get ill uſage, and ſuch gentlemen or ladies that chuſe to commit their watches to his care to be repaired if he do not make them anſwer their expectations he will return them the money they paid him; he alſo covers caſes with ſhagreen or fiſhſkin, and makes them look as well as they did at firſt.

N. B. He likewiſe takes care of clocks in this town, and will keep them in good order, and ſend a man once a week to examine them and wind them up for fifteen ſhillings yearly; he gives the higheſt prices for old gold, ſilver, and ſilver-lace.

July 13, 1773.

To be ſold at publick vendue, on Friday the 15th of October next, at the late dwelling-houſe of Samuel Wickham, of Frederick county, deceaſed, viz.

A TRACT of land containing twenty-ſix acres, another tract containing one hundred acres, adjoining the other, both lying on Monockacy creek, whereon are two framed dwelling-houſes, about fifty acres of cleared land, and ſome in good timothy graſs; alſo one other tract, containing one hundred acres, lying on Fiſhing creek, in the county aforeſaid; whereon is a good dwelling-houſe, ſome out houſes, about forty acres of cleared land, and ſeveral acres of timothy graſs: there is on the ſaid land, a convenient place for building a griſt-mill.—Alſo all perſons indebted to the eſtate of the above-ſaid Wickham, are deſired to make immediate payment, and thoſe who have any juſt claims againſt ſaid eſtate, are requeſted to bring in their accounts regularly proved, that they may be adjuſted, by

JOSEPH WOOD, junr. executor.

Fredreickſburg, Virginia, June 28, 1773.

THE ſubſcriber has for ſale the following tracts of land in Fairfax county: one on Pohick run about 5 miles from Colcheſter, and the ſame diſtance from Pohick warehouſe, containing 957 acres, the other on Four Mile Run, about 4 mile from Alexandria, containing 1225 acres; the ſoil of both is ſtiff and well ſuited to wheat, the laſt tract is very level; both have a ſufficiency of exceeding good meadow ground unimproved, and very valuable mill ſeats. It being very inconvenient for me to attend at ſuch a diſtance, Col. George Maſon of Gunſton in Fairfax has the plats and title papers, and is ſo obliging as to accept a power of ſettling the terms with any perſon inclinable to purchaſe.

JAMES MERCER.

ANNAPOLIS: Printed by ANNE CATHARINE GREEN and SON.